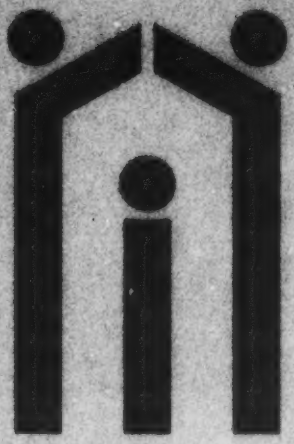


PROTECTING OUR CHILDREN

SUPPORTING OUR FAMILIES:

A Review of Child Protection Issues in British Columbia

January 1992

A consultation paper
prepared for the legislative review
of the Family and Child Service Act

Province of British Columbia
Ministry of
Social Services

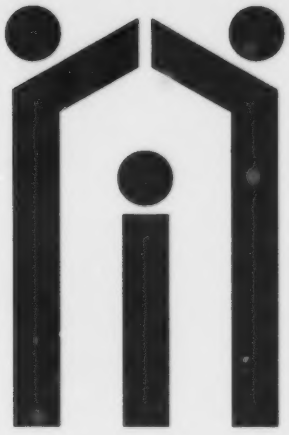
92-02518/

Canadian Cataloguing in Publication Data
Main entry under title:
Protecting our children, supporting our families

Cover title.
"A consultation paper prepared for the legislative review of the Family and Child Service Act."
Includes bibliographical references
ISBN 0-7718-9152-0

1. Children - Legal status, laws, etc. - British Columbia. 2. British Columbia, Family and Child Service Act. I. British Columbia. Ministry of Social Services.

KEB190.3.M5P76 1992 346.71101'35 C92-092049-7
KF479.P76 1992



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Foreword from the Minister

In November, 1991, I announced that a Community Panel had been established to review child protection legislation in British Columbia. This review is intended to be both comprehensive and inclusive. I know that people from all areas and sectors of the Province will want to contribute to this important review.

Over the next few months, various activities will be held throughout the Province. The Community Panel will be using a variety of methods to elicit opinions and ideas regarding child protection issues. You will be hearing from the Panel about these activities.

This Consultation Paper has been prepared by my Ministry to stimulate discussion about the major issues and themes associated with child protection. The Paper raises issues and offers options; it does not provide answers. I am confident that the Community Panel will contribute some of those answers through a widespread consultation.

Hon. Joan Smallwood
Minister of Social Services

For further information about the Community Panel process or to receive additional information about the review of child protection legislation, please phone: 1-800-663-1251, or write to the review:

Child Protection Legislation Review
Ministry of Social Services
Family and Children's Services
Parliament Buildings,
Victoria, B.C.
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Introduction

> The first legal challenge to the absolute rights of parents over their children took place in New York City in 1870. A church worker, while visiting an elderly woman in a tenement building, discovered a child who was beaten regularly by her parents and was also suffering from neglect and malnutrition. The church worker's appeals to the police and district attorney were fruitless. In desperation she went to the American Society for the Prevention of Cruelty to Animals. She argued that the child was being treated like an animal and that she was a member of the animal kingdom. It was on this basis that the Society brought action which resulted in the removal of the child from her family. One year later, the New York Society for the Prevention of Cruelty to Children was established. (Silverman, page 26)

A great deal of progress has been made in the 20th century in the battle against child maltreatment. Now, as this century enters its final decade, it is timely to review our progress to date and review the structures that form the base of B.C.'s child welfare system. Advances in research, changes in society, a better understanding of the needs of children and families, and growing public awareness of the effects of child abuse indicate that the *Family and Child Service Act* of 1981 may require change.

Families themselves have changed. The traditional view of a family as two parents living with their biological children no longer reflects most families in society. A definition of the family must now include a very broad range of arrangements. Families include the traditional family described above, but also include single parents, adoptive parents, foster parents, couples with grown children, non-traditional couples (whether married or not), and people living together for economic or social reasons. In short, the family is a term which has grown to include a variety of ways in which people can live together to provide mutual support and comfort.

The child protection system does not exist in isolation from other forces operating in a modern society. Although the responsibility of investigating child abuse complaints rests with the Ministry of Social Services, the community at large also bears responsibility for the safety and well-being of children. Part of the burden of responsibility requires that the community have a sense of the context within which the child protection system operates.

Families in B.C. are constantly changing. Among the significant changes is the increase in the number of single parents. It is a fact that 50% of the single parents in B.C. are in receipt of income assistance. While it is unfair and untrue to characterize single parents as neglectful parents, the stresses and strains of poverty and want do place single parents in a vulnerable position. The

relationship between families living in poverty and their involvement with the child protection system has been well documented. Debate about the exact nature of the relationship between family dysfunction and poverty is a complex one. What is clear, however, is that an increasing number of children are living in families where the family income is below any definition of poverty.

Families headed by women, aboriginal people, disabled people and recent immigrants are over-represented among the poor. The combination of poverty and membership in an already disadvantaged group can produce a high level of stress for parents and children. Families living under conditions of poor housing, low income and inadequate nutrition may also exhibit poor health care, low educational achievement and transiency.

Isolation, particularly for families who have recently immigrated to Canada, is a growing social problem. While most immigrants to Canada arrive with the expectation that they are beginning a new life in a country full of opportunity, they may have left behind family members, community and relationships that provided support and counsel in times of stress. Additionally, new immigrants must learn to adapt to customs and social values which may be quite different from those they learned in their country of origin. Child-rearing practices vary around the world. The value ascribed to children differs greatly. What is socially acceptable in one part of the world may be frowned upon in Canada. Similarly, government authorities are not necessarily seen as helpful in many countries. New immigrants or members of ethnic minorities may feel particularly vulnerable when visited by an agent of the state. This vulnerability combined with visibility may drive families further into isolation, depriving them of support at the moment when they are most in need.

Overview of the Paper

This paper is provided in order to stimulate discussion. It provides an overview of the key issues in the development of policies and procedures relating to child protection services. It explores some of the conflicting views of the role of the state vis a vis that of the family, and identifies the elements that are key to child protection legislation. The paper is not designed to provide definitive answers to the questions it raises, but rather to identify the issues that require further discussion. This paper is intended to serve as a starting point for broad discussion about the values, principles and standards that must form the core of any legislation relating to children and families.

Chapter 2 describes the current child protection system in British Columbia. It provides demographic information and looks at trends in child welfare. Chapter 3 examines issues relating to the rights and responsibilities of families for the

protection of their children. This chapter covers a range of views concerning family responsibility, from those who feel the state has a very limited role to play in the regulation of family life to those who believe the state should play an active role in family life.

Chapter 4 discusses children's rights, the definition of rights versus that of needs, and the interface between a child's rights and the duties of the state. It moves from the strictly philosophical to the practical by discussing alternative services to youth and their families. Chapter 5 elaborates on the role of the state in providing services to its citizens. The chapter also describes the role of courts and external advocates and the manner in which they affect decisions relating to families and children.

Native child welfare issues are addressed in Chapter 6. A review of the current status of Native child welfare services in British Columbia is provided as well as an overview of some of the cultural dimensions that must be understood. The final two chapters contain information about definitions used in child protection statutes, and provide a comparative review of child welfare legislation across Canada.

The *Family and Child Service Act* of a decade ago established that the "safety and well-being of a child shall be its primary considerations." This was a considerable step away from the father's primacy concept that had been in force at the beginning of the century. The Act designates a Superintendent of Family and Child Service who reports to the Minister and is responsible for the administration of the Act. The Act permits the Superintendent (or delegate) to enter into agreements with parents concerning the care of their children. This recognizes that some situations cannot be ameliorated while parents and their children continue to reside together.

The Act was introduced at a time when the sexual abuse of children was beginning to be recognized as an issue requiring public attention. In the decade since the Act was introduced, other major issues have impacted on the delivery of service to families and children. These changes have had a profound impact on child protection practice in British Columbia. The rapid growth of demand for child protection services has complicated the picture further by compelling staff to stretch resources as widely as possible while still maintaining an ability to deliver core services. Some commentators have indicated that the current Act is too vague in defining children in need of protection. Others have stated that the Act does not give enough authority to enable the Superintendent to become involved in some situations. There is a general consensus that the present Act requires review and renewal to keep up with rapidly changing social values and attitudes.

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British Columbia's Child Protection System

This chapter reviews the existing child protection system in British Columbia. It examines both the structure of the system and the numbers and types of cases that drive it. The child protection system has been in existence in a formal way since the turn of the century. Prior to this there was no formal child welfare system and little legislation to protect children. The social service safety net has spread widely since the Great Depression. Canada now maintains an extensive social service system.

This chapter will look at some caseload statistics. A decade ago, sexual abuse was a little-known issue that child welfare agencies were beginning to address. Today, it is discussed regularly in the media. Not long ago, the preferred model for out-of-home care for children was the institution. The term "orphanage" was commonly used, although few of the children were truly orphans. We now know that institutional placements were usually not helpful. Widespread allegations of physical abuse, sexual abuse and neglect are the hallmarks of this model of care. Both the organizational structure and societal pressure for service will determine the effectiveness of child protection service. It is important to have a clear understanding of both in order to advocate effectively for change.

Legislation

The delivery of child welfare services in British Columbia is governed principally by three pieces of legislation - the *Guaranteed Available Income for Need Act (GAIN)*, the *Family and Child Service Act (FCSA)*, and the *Adoption Act*. The first provides the legislative authority for the provision of certain types of services for families. These include transition houses, homemaker services, rehabilitation resources (which provide youth workers in schools), counselling services, day care, health care, and the child in the home of a relative program. The *FCSA* provides the statutory authority to investigate reports that a child may be in need of protection, the authority to enter into agreements with parents, and the authority to apprehend children. The Act also establishes the role of the court, and sets time limits for the presentation of cases and hearings.

The *GAIN Act* provides the fiscal authority for the provision of services to improve social conditions.

> Interpretation
> 1. In this Act...
> 'Social services' means services or organized activities, provided to or on behalf of individuals or families or the communities in which they live,

that are necessary for the purpose of facilitating access to the necessities of life, maintaining or improving employability or improving social functioning of individuals and families and, in particular, without limiting the generality of the foregoing, includes

a) social services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect and suffering;

b) case work, counselling, assessment and referral services;

c) residential and foster home care services or any form of child care services;

2. Grant of financial assistance or social services

(1) Subject to this Act and the Regulations the Minister may pay... for... social service programs in the amounts as in his discretion he considers advisable to assist in whole or in part individuals... or families. (*GAIN Act*)

The *Adoption Act* was originally designed to provide a mechanism to regulate the placement of newborn infants. While this is still a function of the Act, the scope of adoption has changed to include the placement of wards of the Superintendent who are in need of permanent families. These children, for the most part, are characterized as having special needs. Until the mid-1960s such children were generally not considered for adoption and remained in foster homes or institutional care. The *Adoption Act* was enacted in 1920 and although it was revised in 1957, it has remained virtually unchanged. Three recent amendments reflect the changing face of adoption in British Columbia. Assisted adoption was made possible following an amendment to the Act in 1988. The objective of this program is to secure a suitable adoptive home for children with special needs who would otherwise not be adopted. The program permits the Ministry to enter into an agreement with adoptive parents in order to cover certain current or future costs related to the child's care. The *1990 Adoption Amendment Act* was designed to regulate the growing number of private adoption placements in British Columbia. It provides for the establishment of licensed adoption agencies and sets out the criteria for licensing, private placement and consent.

The *1991 Adoption Amendment Act* establishes an active adoption registry to supplement the existing passive adoption registry. The active registry will serve to re-unite birth parents and their adult offspring. Beliefs about adoption have changed considerably in the last 30 years. During the 1960s, the belief was that there should be no contact between the birth parent and the child placed for adoption. It is now accepted that such contact may fill important needs. Although the *Adoption Act* touches only peripherally on direct child welfare services, the relationship of adoption to child protection is strong. Some

provinces have developed uniform child welfare acts. These acts contain all of the elements described above. Ontario is one such province. The Ontario legislation contains provisions relating to adoption, child protection and the provision of services to families. Nova Scotia proclaimed new child and family legislation in 1990. Like Ontario, Nova Scotia's legislation contains provisions respecting both adoption and child protection. On the other hand, Saskatchewan proclaimed new legislation in December 1990 that separates adoption and child protection, which were formerly in the same Act.

Organizational Structure

The Ministry of Social Services administers the FCSA, which provides child protection services in British Columbia. For many years, service has been delivered through a regional structure, with a network of district offices located in most communities throughout the province. This regional structure has permitted the development of services designed to meet local needs. While each region must provide the services mandated by legislation and policy, there are regional variations based on the different needs of each community. Local organizations deliver some of these services on behalf of the Ministry.

Until 1988, service was delivered through a network of district offices throughout the province. Each district office provided income assistance, child welfare, adoption services, services to clients with a mental handicap, and services under the now-repealed *Child Paternity and Support Act*. In each office, the District Supervisor (DS) was responsible for the coordination of services. A group of social workers, financial assistance workers (FAWS) and administrative support staff reported to the DS, who in turn reported to a regional manager.

In 1988, the Ministry was reorganized into service delivery units that report through a functional management system. In some smaller communities, district offices continue to provide a range of services. However, in most large communities, district offices now deal exclusively with income assistance, family and children's services, or services to clients with a mental handicap. Each team of workers in these offices receives supervision from a DS who specializes in one of the three program areas. The DS, in turn, reports to an area manager who has similar program responsibilities. The Area Managers report to one of 10 Regional Directors who are responsible for service delivery in the Ministry's regions. Service integration occurs at the regional management level.

Family and Children's Services

The Superintendent of Family and Child Service is appointed by the Minister and represents the rights and interests of children when there is a need for protection, guardianship or support services. The Superintendent is responsible

for the administration of the FCSA and the *Adoption Act*. The Superintendent acts directly and through delegates. Duties and functions include providing leadership, setting standards, providing staff training, providing assistance and advice in individual cases, and monitoring the service provided on behalf of children. The Superintendent is also responsible for the Inspection and Standards Unit. This unit conducts regular audits of district office case practice and reviews "critical incidents" — cases where death or critical injury to a child have occurred or cases where there is considerable conflict about the role or actions of Ministry staff.

The Family and Children's Services Division of the Ministry of Social Services is responsible for planning, policy development, budget preparation and legislative change proposals. Recently, the division published the *1991-92 Program Plan*. The *Program Plan* describes the Ministry's primary responsibility as "child protection with a family focus."

> Families are responsible to ensure that their children are safe from abuse and neglect. If required, our intervention will assist families to fulfil this responsibility. Where this is not possible, an alternative safe and stable environment will be provided that assists children to achieve independence and self-sufficiency.

While the core activity remains child protection, there are a number of related services offered by the Ministry that have distinct characteristics. These services are delivered across the province, but may take different forms depending on the local service delivery system, community size or geography. They include services to support families, services to youth, Native child welfare, and adoption services.

Service Delivery

While the Ministry's social workers provide child protection services, they are assisted in other aspects of service delivery by hundreds of groups and individuals. These are the foster and group-home parents, child care resource staff, non-profit society staff and service contractors. These people work with ministry staff to provide a variety of services in communities across the province. Among these services are residential programs to care for children who enter ministry care. Residential services for children and youth range from foster homes to intensive child care resources with high staffing ratios. A range of placement types is needed in order to respond to the many needs of children in care. Staffing of these resources is a critical issue. Agencies must ensure that staffing is adequate to meet the needs of the children, and must ensure that the level of training of the staff is sufficient to address the types of issues that arise. This is particularly true of resources for children with developmental delays or other medical difficulties.

The residential resources are only part of the service-delivery system provided by non-ministry staff. Non-residential resources include homemaker services, special services to children and families, Reconnect, rehabilitation resources, and Families First.

These programs operate in close cooperation with local ministry field staff. Sometimes an advisory or steering committee is struck to assist in the development of protocols and policy. In some communities, one or two community agencies provide many of the contracted services. In larger centres, there may be a dozen agencies providing service.

There are issues that are more acute in some communities than others. The number of child prostitutes on Vancouver streets is one example. In addition to the services contracted through Reconnect, non-residential, and rehabilitation resource programs, the Ministry operates an adolescent services unit in downtown Vancouver. Other ministries operate programs for street youth and the City of Vancouver provides additional funds. The coordination of services in this situation is very important. A local street youth committee meets regularly to discuss individual cases as well as some of the larger policy questions.

Inter-ministry children's committees (IMCCs) were formed in 1978 in most communities as an attempt to draw together the various ministries with a legislative mandate to provide service to children and youth. At the time, these ministries were: Education, Health, Solicitor General, Attorney General, and Social Services and Housing. In some communities, other agencies would attend. The IMCC model did not always work particularly well. Confusion about the role of the committee combined with re-organization of several ministries since the inception of the concept led to a decline in commitment. The concept has, however, been revitalized by the Child and Youth Secretariat. The committees are now known as local Child and Youth Committees and have developed a clear reporting relationship with the Secretariat.

Statistical Overview

After a number of years of decline, the child population in B.C. is again increasing. This is significant for child protection policy development, as the historical relationship between child population and number of children in care has been direct - as the number of children in the population rose, so did the number of children in care. This pattern held consistently through the 1960s, 70s and 80s. This pattern is now changing, though, and further research is required.

The number of children in the 0-19 age group has increased by 50,700 (6.3%) since 1986. Last year the increase was 11,500 (1.4%). The increasing trend is expected to continue over the next decade. By 1995, this age group will increase by a further 59,000 children and, by 2000, it is expected to increase by 105,000. Ministries and agencies concerned with children will all experience an increase in workload as these children move from maternity hospital to home, daycare, and school.

The number of children in the 15-19 age group declined by 13.5 per cent in the 10 years between 1981 and 1991, while the number of children in the 0-4 age group increased by 15.3 per cent. This suggests a decline in the need for services oriented toward teens and an increase in services oriented toward infants. The balance between shifting services to meet the needs of younger children, and the need to retain services for teenagers is a tricky one. This population shift will be experienced in different ways across the province. Urban areas will begin to feel the pressure sooner due to a larger population base.

Child Population
(Thousands)

Age Group	1981	1991	Change
0-4	191.2	220.4	+15.3%
5-9	189.0	217.5	+15.1%
10-14	208.1	207.1	-0.5%
15-19	239.3	207.1	-13.5%
Total	**827.6**	**852.1**	**+3.0%**

Although the size of the child population determines the number of children who are potentially at risk, it is the strength of the family that determines the proportion of that group requiring service. The latest estimates suggest that the total number of families with children has changed very little since the 1981 census. In 1990, there were 385,300 families, up by 7,000 or 1.9 per cent. However, the apparent lack of change in the total hides some very profound changes in family structure. Between 1981 and 1990, the number of husband-wife families declined by 14,200 or 4.4 per cent, while lone parent families increased by 21,200 or 37.6 per cent.

Lone parent families tend to be more vulnerable during times of crisis and may have fewer supports — financial and social — to aid them. At least 47 per cent of children admitted to care came from single parent families.

Families
(Thousands)

Type	1981	1990	Change
Husband-wife	321.9	307.7	-4.4%
Lone parent	56.4	77.6	+37.6%
Total	**378.3**	**385.3**	**+1.9%**

Section 7 of the *Family and Child Service Act* requires that a person who has reasonable grounds to believe that a child is in need of protection must report the circumstances to the Superintendent. Section 8 of the Act requires the Superintendent to investigate the circumstances of such reports. In 1990-91 there were 31,429 investigations of possible abuse or neglect. As a result of these investigations, over 14,000 new or revised plans for family support were formulated.

Of the 31,429 investigations in 1990/91, neglect was the most frequently cited complaint, followed by sexual abuse and physical abuse. All types of complaints were down from the previous year with sexual abuse showing the largest percentage decrease. The chart below illustrates these changes.

Protection Investigations

Type	1989/90	1990/91	Change
Physical abuse	6,500	6,349	-2.3%
Sexual abuse	6,943	6,412	-7.6%
Neglect	9,340	8,846	-5.3%
Other*	5,860	5,656	-3.5%
Multiple types	4,319	4,166	-3.5%
Total	**32,962**	**31,429**	**-4.7%**

* emotional abuse, teenage children at large, orphaned children, etc.

Not all children who enter care do so as the result of a child protection complaint or investigation. Similarly, not all protection investigations lead to apprehension. There are a variety of possible responses for each individual situation. Most of the plans (64.9%) involve the establishment of a family service file which will be managed by ministry staff. Referrals to collateral agencies represented a significant portion of the service plans developed. This reflects the increased availability of family support programs.

The Ministry is committed to maintaining children in their own families wherever possible. Where it is determined that it is not possible to provide for the safety and needs of a child within the family, the child may be admitted to the care of the Superintendent. When possible this is accomplished with the co-operation and agreement of the parents. Admissions to care during 1990/91 totalled 5,687. Of these, parental agreements represented 2,456 (43.5%). This was a decrease of 8.4% over the previous year. Admission by court action (apprehension) totalled 3,183 (55.8%).

Admissions To Care

Type	1989/90	1990/91	Change
Agreement	2,682	2,456	-8.4%
Court action	3,436	3,183	-7.4%
Other province/ country	42	48	+14.3%
Total	**6,160**	**5.687**	**-7.7%**

Children enter care for a variety of reasons and by a number of different routes. Once in care, however, they must have their needs addressed on an individual basis to ensure that the plan is compatible with meeting both short- and long-term needs. A steady decline in the number of children in care has been evident for the past decade. On March 31, 1991, there were 6,084 children in care. This is 2.2 per cent fewer than on March 31, 1990.

Children In Care

Age Group	March 31, 1990	March 31, 1991	Change
0-4 years	986	1,010	+2.4%
5-9 years	901	917	+1.8%
10-14 years	1,641	1,550	-5.5%
15-19 years	2,696	2,607	-3.3%
Total	**6,224**	**6,084**	**-2.2%**

The Ministry's goal is to work with parents, whenever possible, towards the return of their children. Where this is not possible, attempts are made to place the child within the extended family or in an alternate permanent home. Where it proves impossible to return a child to the immediate or extended family, the Ministry concentrates on providing good substitute parenting and on preparing the child for eventual independence.

This chapter has provided an overview of the current child protection system in British Columbia. Further information may be obtained through a companion statistical document, the *Family and Children's Services Overview*. This document is available on request by calling 1-800-663-1251, or by writing to:

Child Protection Legislation Review
Family and Children's Services
Ministry of Social Services
Parliament Buildings
Victoria, B.C.
V8W 3A2

CHAPTER 3
RIGHTS AND RESPONSIBILITIES OF PARENTS

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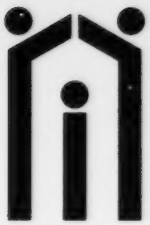

Rights and Responsibilities of Parents

To raise the issue of child protection in our society is to invite passionate debate and highly contradictory points of view about this complex public policy issue. Still, most reasonable people would probably agree that:

- even the strongest parents occasionally need additional support;
- parents and families have primary responsibility for the care and protection of their children;
- children should not be abused or left unprotected;
- children's rights to protection can best be guaranteed if their parents assume child-rearing responsibilities;
- as a society we will not stand by and allow a child to be seriously harmed; and
- if parents cannot protect their children, the state has a responsibility to intervene, either by supporting the family or by providing an alternative, safe environment for the child.

Despite the broad consensus on these beliefs, their successful transformation into legislation and child protection policies is immensely difficult to achieve. Continual revision and review is required to balance the conflicting rights and roles of the state, the child and the family. Definition poses additional difficulty. For instance, what is child neglect? Who has developed the standard?

Children, parents, the courts, the community, the state, and the extended family are all intimately concerned with these questions. All must be involved in the development of a sound child protection system. However, the authority and responsibilities of each, in relation to the others, involve relationships that are difficult to reflect accurately in law and policy.

The relationship between family members plays an important part in many families. In some cultures, the parents are not seen as sole caregivers for their children; they are joined in this role by members of the extended family. It is not uncommon, in some cultures, for several generations of a family to be sharing living quarters and responsibilities.

As noted in the Introduction, the aim of this paper is to explore the various points of view that need to be taken into account and considered in any legislative review of our major child protection statute. No attempt is made at this stage to find a consensus around opposing points of view or to comment on their relative merits.

This chapter focuses on the rights and responsibilities of parents and families with regard to child protection. The perspectives reviewed in this chapter range from greater to fewer parental rights and responsibilities. Most people's views probably do not fit neatly or completely into a distinct category but represent a range of values, beliefs and assumptions.

Exclusive Parental Rights

Until quite recently, children were considered in law to be the property of their parents, who had absolute authority and power. The definition of childhood itself is a relatively recent phenomenon. The need to ensure family income through the labour of children is a practice abandoned only at the turn of the century in industrialized countries.

> Early European legal systems gave little, if any recognition to the rights of the child... The Roman concept of patria potestas gave the father almost absolute power over his children. In early Germanic law, the child was under the *Munt* of the father, which gave the father authoritative control. Neither the Roman nor the Germanic code made explicit the obligations of the father to maintain and protect the child. Parents in pre-Revolutionary France could obtain a lettre de cachet permitting imprisonment of a disobedient child, and the Napoleonic Code clearly defined the subordinate position of the child. (Kadushin and Martin, page 51)

British Columbia's first child protection statute, the *Protection of Children Act*, was proclaimed in 1901. However, even though legislation limiting absolute parental rights has been in existence since the turn of the century, some individuals, groups and communities still question the basic right of the state to intervene in family matters, regardless of the danger to the child. This is an extreme position, probably held by a minority of people, advocating the rights of parents absolutely over the lives of their children.

Maximum Parental Rights

A less extreme position calls for allowing maximum parental rights and responsibilities. However, there is an acknowledgement that as a last resort, the state does have the responsibility to intervene in family life if a child is in need of protection.

This perspective has its roots in two basic beliefs. First, that the family, whatever its structure, size or composition, presents the best possible environment within which children and parents alike can meet their needs for development, growth and meaning in life.

> The family as a basic social unit is inextricably associated with survival for children and with the satisfaction of persistent adult yearnings for closeness and affirmation. In the functioning family, regardless of structure, we can see the expression of a universal search for an extension beyond the boundaries of one person's limitations. (Solnit, page 387)

According to this view, parents require relative autonomy and privacy to fulfil their two primary roles. The first is to nurture their children — to feed, bathe, hold, stimulate, soothe and love them. Parents' second role is to advocate on behalf of their children — to protect them from danger, act as a buffer and shelter, and to represent children in the larger community, guiding them to eventual maturity.

In return, the parents derive self-fulfilment and a sense of purpose from this relationship. These intimate family dynamics are enhanced when it is accepted in custom and law that parents should be relatively independent in both their nurturing and advocacy functions.

> Parents should be protected by law from restrictive or interrupting intrusions into those functions that are essential aspects of parental autonomy and that are basic conditions for achieving the privacy and intimacy of a well-functioning family. (Solnit, page 497)

A second basic belief underlying this view is that coercive state intervention is more likely to produce negative results than the positive protection of children.

> ...there is substantial evidence that, except in cases involving very seriously harmed children, we are unable to improve a child's situation through coercive intervention... in fact, intervention may worsen the child's situation. (*Standards Relating to Abuse and Neglect*, page 50)

In particular, child welfare researchers note that the child protection system has a disproportionate impact on poor and Native parents and children. In a province like British Columbia with diverse cultural traditions, some worry that state intervention could result in discrimination against minorities.

Family and State as Partners

A distinction can be made, however, between coercive state intervention and voluntary state support of families. Because of the basic belief in the family, there is a strong sense among some people that if government is going to turn its attention to the family, the focus should be on supportive, completely voluntary services, such as day care or subsidized housing. Such service would be delivered on the basis of an agreement between families and the social service departments of government. Underlying this view is the expectation that a common definition of the issues to be addressed would be arrived at between the parties.

An additional core element of this view is that neither the family nor the government has exclusive jurisdiction over families. Communities large and small are an integral part of the picture. They play this role through the definition of community need, identification of resources to meet that need and through the use of formal and informal networks. This view expands child welfare services beyond the narrow definition of child protection.

> The community protects children by licensing day-care centers and providing legal sanctions against child labor, neglect and abuse of children, truancy and the sale of alcohol, tobacco and pornography to minors. Through legislation establishing adequate programs for social insurance, income maintenance, health care, public welfare agencies, schools and recreational facilities, the community provides resources that enable children to meet their needs. (Kadushin and Martin 1988, page 14)

Maximum State Authority

This perspective emphasizes the state's direct involvement in the supervision of the parent-child relationship through child welfare legislation. Proponents of this view consider the family to be a potentially dangerous environment for a child. They cite, with serious concern, the numbers of children who are abused or neglected by family members in the home. They also point to the seeming increase in overall patterns of family violence that involve children directly or indirectly. In addition, they suggest that adults previously unknown to the child are introduced into the privacy of the home setting due to the growing numbers of single parents and "blended" families. At least initially, these adults have no primary bond with the child. All these factors create strains and stresses on the ideal of the family as the natural and preferred environment for children.

Accordingly, this perspective sees parents as only stewards for their children. Children are viewed as the collective responsibility of the family and the state, not the property of the biological parents.

> The family is the primary caregiver but this responsibility is shared with the state. An important role of the state is to monitor parental child rearing practices and to intervene when the behaviour of the parents interferes with the child's optimal development. This approach emphasizes that decisions made by parents are not always based on what is in the child's interests, early intervention is necessary to prevent future problems for the child, and parents will often resist the use of prevention services by state agencies if such services may be provided only on a voluntary basis. (Barnhorst, page 256)

Proponents of this perspective believe that parents' decisions about their children should legitimately be scrutinized by the state if there is any possibility the child is at risk. The state's intervention can be inserted at many levels: the state may investigate an allegation of abuse, provide family support services that parents may be encouraged or even coerced into taking, and apprehend children where the risk to the child is seen as serious. Parents' rights, in this perspective, are always seen as secondary to children's rights. Activists are sceptical of most governments' professed belief in the autonomy of the family and its right to non-intervention. They worry that underlying this adherence to the traditional value of the family is a reluctance on the part of society to accept the financial and moral responsibility for the welfare of its children.

Policy Implications Arising from the Continuum of Perspectives

For those who accept the necessity of state intrusion into family life if a child is in need of protection and the parents cannot provide it, current reporting-of-abuse requirements and subsequent investigations have arisen as emerging issues.

However one defines "child in need of protection", the main question is: "How will the state know if a child is in need of protection?" The only possible response is that it will have to find out. To find out, it has to make enquiries and conduct investigations.

All Canadian provinces have reporting requirements making it compulsory for persons suspecting that a child is in need of protection to report that suspicion to child protection authorities. As a result of that requirement, enhanced public awareness of child abuse, and the tragic cases that are reported in the media, the amount of reporting far exceeds the number of substantiated cases of children

requiring protection. However, all reports of potential abuse must be investigated in order to establish their validity and to determine what steps, if any, are necessary to protect the child.

The problem is that the pursuit of such enquiries or investigations must, by definition, infringe upon family autonomy and privacy. Where this infringement results in knowledge that a child indeed requires protection that the parents cannot provide, most reasonable people would likely concur that the intrusion is justifiable.

However, for some families who have had their privacy invaded as a result of unsubstantiated allegations, the experience has proven to be traumatic, damaging to their reputations, disruptive to their relationships with their children, highly emotional, and sometimes financially crippling.

Those who believe in minimum state involvement maintain that significant over-reporting not only invades family privacy unnecessarily and with harmful results, but also that the demands on the child protection system of over-reporting are such as to jeopardize children who are really in need of protection. By stretching the system to its limits, children in real danger are getting lost in the press of inappropriate cases. Professionals who should report become so disillusioned with the inability of the system to respond effectively, they consider it pointless to do so.

The answer, according to some, is to develop strategies to reduce the rate of inappropriate and unfounded reports. Possible strategies suggested are:

- to make it allowable for anyone, and compulsory only for professionals, to report suspected cases of abuse;
- to provide more guidelines, education and information to professionals about the symptoms of abuse and neglect; and
- to assess, when reports are first received by a child protection agency, both the report and reporter, in order to judge whether the allegation has some sound basis for investigation.

The fear, understandably, is to judge an allegation frivolous or misinformed or unworthy of follow-up, only to discover at a later point that a helpless child suffered as a result. On the other hand, to treat all allegations in exactly the same way may also entail risk to children.

> Professionals and private citizens need to do a much better job of identifying and reporting suspected cases of child abuse, while also guarding against inappropriate reporting. Recognizing appropriately reportable situations is difficult, but the current high

> rates of simultaneously under- and over-reporting are unfair to the children and parents involved and threaten to undo much of the progress that has been made in building child protective programs. A proper balance must be struck. If child protection agencies are to function effectively, they must be relieved of the heavy burden of unfounded reports. To call for more careful reporting of child abuse is not to be coldly indifferent to the plight of endangered children. Rather, it is to be realistic about the limits to our ability to operate child protective systems. (Besharov, page 9)

The opposite argument is made by those who believe in the beneficial impact of more, not less, state involvement in family life. From their perspective, invasion of family privacy as a result of abuse allegations is an unavoidable result of the state's obligation to protect helpless children. These proponents would take the view that many of the so-called unsubstantiated allegations do, in fact, reveal situations where the child is at risk, although evidence of maltreatment is sometimes hard to obtain. Investigation into the particular allegation, while not substantiated, often reveals family tensions that can be eased by support services. These, in turn, can prevent more acute situations from developing into protection cases.

Responding to the issue of the overextension of the system, proponents of this perspective would argue that we need more government resources, more social workers, more family support workers, and more alternate caregivers to address the issue effectively.

Finally those who believe in more state involvement would note that non-reporting can be fatal to children. Child abuse is widespread. We should intensify our efforts, not reduce or try to contain them.

Legislative Implications

The value one ascribes to the family as the central child rearing unit in our society will shape the legislative framework related to child protection. There is a central issue any legislation must address: at what point in parental decision making or action affecting children should the state intervene?

The child protection mandate given to the state will depend upon one's philosophy about the family and beliefs about parental rights and responsibilities.

To analyze the philosophical underpinnings of any provincial child welfare legislation, one might look specifically to the following key provisions (from Barnhorst, pp. 256-280).

- **Principles.** A statement of principles intended to apply throughout the legislation will provide insight into the policy perspective enshrined in the law. The principles might include statements about the role of the state, the responsibility of parents, the autonomy of the family, and so on. These statements will reveal the overall emphasis of the statute and the core beliefs that are reflected in law.

- **Grounds for apprehension.** Where the legislation contains broad grounds that are open to a wide variety of interpretations, it is likely that the statute has a significant interventionist perspective, emphasizing the role of professionals and the courts in deciding when a child is in need of protection. Alternatively, where the grounds for apprehension are narrow, specific and legalistic, it is more likely that child protection agencies will give more weight to family units and privacy and will intervene only in a restrictive range of circumstances.

- **Role of the court.** Where parents' rights and family privacy are highly valued, the child protection statute will often require a warrant for apprehension, unless the child is in immediate danger. This means that a social worker would not be authorized to apprehend without first getting a warrant, unless the child is in immediate danger.

- **Interim custody of the child.** At the first court appearance, the court is unlikely to make a determination that the child is in need of protection. Therefore a two stage process begins, the first phase of which involves determining whether the agency or the parent should have custody of the child pending the hearing. Statutes that emphasize the value of parental rights and responsibilities will contain adequate notice and hearing requirements. They may order the provision of support services to the family so that the child can stay with the parents, and will address the issue of parental access to the child during the adjournment. It should be noted that provinces with statutes that do not contain these provisions in law may nonetheless have systems that encourage such family-based practices and policies even though not enshrined in legislation.

- **Dispositions.** Having decided that the child is in need of protection, the court must then decide what intervention is necessary. A perspective, focusing on the primary role of the parent, would favour the least restrictive alternative. Such provisions would provide specific criteria that favour keeping the child with his or her parents wherever possible.

CHAPTER 4
RIGHTS OF CHILDREN

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The Rights of Children

The Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child (ratified by Canada on December 11, 1991) are used by proponents of the children's rights movement to press for recognition in legislative statute and public policy of certain inalienable rights for children.

The rights of children to protection from harm are contained in provincial child protection statutes. Whether implicit or explicit, these protection rights are generally defined as:

- the right to parental love and a healthy home environment;
- the right to basic human gratification: love, security, guidance, adequate nutrition, shelter, health, education; and
- the right to be protected from abuse, abandonment and neglect.

While most people would concur with the formulation of these basic rights, the difficulty lies in the more fundamental question of determining who is responsible for interpreting these broad statements of rights, and how they will be enforced. In addition, concern has been expressed about the relationship between children's needs and children's rights.

Rights of Children and Rights of Parents

The critical question, from a protection point of view, concerns the point at which the right of parents to raise their children as they see fit comes into conflict with the rights of children to be protected from harm. The range of opinions on this issue is large. Consensus seems to exist that parents who put the lives of their children at risk should forfeit their own rights and responsibilities in order for their children to be protected. Hence, whenever serious physical or sexual abuse or neglect are found to exist, there appears to be consensus that the state not only can, but indeed should, intervene to ensure the child's right to protection.

But, where it is the quality of life that is the issue, and life itself is not in danger, what are the child's rights?

Some people believe that all children have a right to be brought up in the "optimum" environment that promotes their overall well-being, including their physical, emotional, social and intellectual development. According to this

viewpoint, if parents cannot provide such an environment, the child's best interests are not being met and the state has the right to intervene in order to improve the situation. This intervention could be perceived as helpful. For example, the state could provide day care for children not properly attended to during the day. However, it could also be more compulsory and intrusive; for example, the state could require a parent to accept a homemaker into the home three days per week to ensure that certain nutritional requirements would be met. In any case, whether voluntary or compulsory, the authority for intervening would come from acceptance of the child's right to an optimum environment in which to grow up.

A narrower statement of children's rights is that they have the right to be brought up in a safe and protected environment. In this case, there is a recognition of the imperfections and flaws of all parents and an acknowledgement that many may well not provide the optimum environment. As long as they keep their children safe and do not actively abuse them, they should retain their rights to raise their children as they see fit without external interference. This position seems reasonable in many ways. However, the fact is that if this is the prevalent belief system, and if our child protection legislation reflects this belief, society will be leaving hundreds and perhaps thousands of children in situations which, although not fatal or permanently physically debilitating, may create significant deprivation for them. The Swedish ombudsman poses the question:

> What can we do for children born to alcoholic parents who are incapable of taking care of themselves, much less taking care of children? These children are growing up in very frightening surroundings with parents who are either drunk or more or less unconscious, or who behave in unpredictable ways incomprehensible to children, who learn that it is impossible to predict how people will react and act in different situations. To survive, these children block out all the frightening experiences, but at the same time block out all the positive experiences that could stimulate their development. When the children get older they are the ones who take care of their parents. Is it fair to expect a three year old child to take care of parents, to clean up the vomit, look after the parents so they don't fall and hurt themselves, be the go between in fights, hide under the bed during the worst acts of violence, try to find something to eat? What kind of life is it we offer these children?... Shall we sacrifice them in order to satisfy grown-ups' needs to have children? Have children no human rights of their own? (Ronstrom, page 127)

Rights of Children in Care

If a court has decided that a child is in need of protection and the child's natural parent cannot or will not, even with support, provide that protection, the child may become a temporary or permanent ward of the state. Does the application of general children's rights to children in care differ in any significant respect from those of children living in their own homes? There are, perhaps, some critical placement and procedural rights that should be considered and that one might wish to see enshrined in legislation.

In British Columbia, a private member's bill was introduced in 1989 (Bill M235) regarding the rights of children in care. It included the following rights:

> Each child who is in the care of the Province of British Columbia has the right to:
>
> a) speak in private with their parents, other members of their family, foster parents or other members of their foster care family;
>
> b) speak in private with a lawyer, the Ombudsman or a Member of the Legislative Assembly;
>
> c) independent legal counsel;
>
> d) receive and send mail privately and without censorship;
>
> e) reasonable privacy and possession of personal property;
>
> f) receive religious instruction of his or her choice;
>
> g) receive instruction pertaining to his or her cultural heritage;
>
> h) a plan of care by the Ministry of Social Services;
>
> i) participate in the development of the plan of care;
>
> j) services outlined in the plan of care;
>
> k) to be consulted in decisions related to guardianship, custody and a determination of status;
>
> l) independent adult counselling and legal assistance in relation to all decisions affecting guardianship, custody or determination of status;
>
> m) a competent interpreter where language or a disability is a barrier in relation to all decisions affecting guardianship, custody or determination of status;

n) a full explanation of all decisions affecting guardianship, custody or a determination of their status;

o) be informed of their rights; the review process available to them and the application or enforcement of those rights; and

p) access their files at the Ministry of Social Services, upon reaching the age of majority.

The right to an advocate. Children living at home are members of a small primary group headed by parents who are expected to advocate on their children's behalf and represent their interests in the larger community.

Children separated from their natural parents and living with substitute parents in foster homes and other arrangements become part of a vast bureaucratic system characterized by complexity and conflicting interests. Who is the child's advocate in that system? Certainly many social workers would see themselves as advocates for the children for whom they have responsibility. They also have professional and bureaucratic responsibilities that may not always be in complete accord with their role as child advocate. Many foster parents, especially those who have the same children in their homes for a long period of time, may feel the psychological need to represent "their" children and may want to act as advocates. Foster parents often feel they have no standing, authority or even right to be heard when important decisions about these children are made. The courts will sometimes provide an advocate for children, but usually only concerning court-related decisions.

Most provincial governments have positions such as that of guardian, superintendent, advocate or director, whose mandate it is to ensure that the needs of children in care are met. However, these offices usually concentrate on the quality of the systems, policies, procedures and standards that govern the child care system as opposed to specific advocacy for individual children.

The right to be heard and the right to decide. As a child develops, he or she learns to communicate directly with others and to express preferences, needs and opinions. It is increasingly common in law and in practice to ensure that children are given every opportunity to be heard when decisions about their lives need to be made. The older the child, the greater the weight that is usually given to the child's preference by the adult decision-maker. In that sense, as they become older, many young people are able to advocate for themselves and should perhaps be given every opportunity to do so.

Should the older child have the right to decide, and not just be heard about such fundamental issues as his or her placement? There are some children's rights proponents who would take the view that a young person of 15 or 16 years of age should be able to choose whether or not a particular placement is acceptable. The reality from a social worker's point of view is that a young person of this age who does not want a particular placement will not stay there even if forced to go. He or she will run, or behave in such an objectionable way as to be asked to leave.

The right to a safe and appropriate placement. Coercive state intervention that leads to child apprehension is based on the assumption that an accurate and sophisticated assessment of the possibilities of the home situation has been completed and that the state can and will provide better alternatives for the child. At the same time, it is probably fair to say that apprehension may sometimes appear to be simply the easiest and safest response from the child welfare system, but not necessarily for the child.

> Removal is a clean, simple way of dealing with the problem and protects all the agents of the state from taking responsibility for the omnipresent, unpredictable possibility that this child may be **the** child who will suffer severe neglect if left with the family. (Wilson, page 64)

For even a child who has been abused, however, removal from the family home and placement in another environment represents a difficult move.

Under the circumstances, it seems incumbent upon the state to ensure that its alternative is one that will assist the child. It should not create more problems or even replicate the abusive family environment from which the child has been removed. How can the state provide to each child in care the right to a safe and appropriate placement? The question raises a number of complex resource issues that involve the foster home program, special-care-home and group-home placements, and other residential options.

Some people believe that the placement options for children in care can and should be stated in legislation. This could be either in statute or in regulation, depending on licensing requirements and qualifications of residential and ministry staff. Only then, some argue, can the total child placement system be held accountable under standards that are measurable and monitored. Others, while agreeing with the need for such standards, believe that they are subject to change on a regular basis and should therefore be contained in policy, not in legislation. Yet others consider licensing and qualifications less essential than a placement in the child's own community near friends and family. This is especially relevant for temporary wards, for whom the plan is an eventual return home.

The right to a safe and appropriate placement, however it might be ensured, is one that few people would deny.

Children's Needs and Children's Rights

Sometimes a dilemma is created when children's rights conflict with their needs as identified by adults. For example, consider the situation of a young person wanting to move from a small town in the interior of the province to Vancouver. The social worker, in consultation with the parents and others, may believe that this move would conflict with the individual's need for continuity and stability in relationships.

Does a 13-year-old adolescent girl living at home have the right to be placed in an alternative home setting by the Ministry if she has problems with her parents? If there is no protection issue (i.e., she has not been abused, neglected or abandoned), what right, if any, does she have to move to a more compatible home environment?

Some children's rights proponents would argue that an adolescent does have this right:

> Basically we need a more flexible emancipation proclamation procedure for teenage children, establishing their lawful right to move elsewhere - temporarily or permanently - without becoming a ward of the court... Networks of non-coercive surrogate homes or hostels would help fill the need for children who can't make it with their parents. (Wald, page 388)

Others believe the adult's perception of the child's needs for stability and long-term family connection outweighs her right to move:

> Children's rights, especially in the younger years, are subsumed under their needs to have constant, caretaking adults, usually their biological parents, who will determine how their needs can best be met in the context of a family whose overall integrity is assured by the relatively autonomous authority of the parents... children need the insulating, protecting, decision-making authority of nurturing parents who do not abandon them to their 'rights'. (Solnit, pp. 500-501)

Alternative Services to Youth and Their Families

Most child protection legislation applies to "children" up to 17 or 18 years old. Most children in the care of the state in British Columbia are adolescents.

Compared to younger children, adolescents are usually expected to take more responsibility for, and be involved in, planning their transition to independence. This is the case for adolescents in their own homes as well as those in the care of the state.

As adolescents approach adulthood, their gradual assumption of increasing responsibility for their own lives is accompanied by a gradual reduction in the rights of their parents and the state to make unilateral decisions on their behalf. As Lord Denning has noted with regard to a parental right, "It is a dwindling right which the courts will hesitate to enforce against the wishes of the child, the older he is. It starts with a right of control and ends with little more than a right of advice." (Dickens, page 123)

What is the proper application of contemporary child protection options for adolescents? This becomes a particularly difficult and controversial question when one considers such issues as adolescent consent to services, involuntary containment, and options with regard to juvenile prostitution.

A coherent approach to protection services to adolescents depends upon one's fundamental beliefs and values about the appropriate role of the individual, the family and the state, and the shifting balance of those rights as children become adolescents and move towards adulthood.

The two concepts that might be most helpful in considering this issue are focus on protection and focus on transition. They are not mutually exclusive, but each is based on a set of premises that is distinctly different in some key respects from the other. In the former approach, the pull of both the family and the state is directed towards the position of continued responsibility of adults for meeting the needs of adolescents, especially adolescents in trouble. In the latter approach, the emphasis is on youth assuming adult responsibilities for their own development. They supposedly have the right to make decisions for themselves, even if those decisions appear to others and even to themselves as the wrong ones.

Focus on Protection

Those who follow the focus-on-protection approach maintain that until a child reaches the age of majority, either the family or the state retains some responsibility for the protection of these individuals. Further, they argue that children develop and mature at different ages. Simply because one particular 15-year-old can manage on his or her own does not automatically mean that all 15-year-olds are mature and capable of making their own decisions about what is in their own best interests.

The focus on protection means that if a 16-year-old youth makes a decision that could be harmful to physical well-being (for instance, becoming an habitual drinker), then it becomes the family's responsibility to intervene and attempt to control this behaviour. If the family is not capable of controlling such behaviour, then the state should intervene, initially on a voluntary basis, to attempt to do the same. If such voluntary methods fail, then the state should have the authority to apprehend the youth and, if necessary, place in a setting that will control harmful behaviour.

The basic premises of the focus-on-protection approach are:

- neither the family nor the state should allow adolescents moving towards adulthood to make decisions harmful to their basic safety and well-being, and

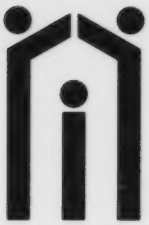
- as a society, we will not condone such behaviour without trying, even coercively, to ameliorate the situation.

The proponents of this approach would say that the adolescent learns how to make important personal decisions, knowing there is some kind of family or state safety net that can be called upon. This gives much needed security to experiment with their new status and gradually assume control of their own lives.

There are several variations to this approach. Using these premises and applying them to the problem of juvenile prostitution, one would argue that the state not only has the right but also the responsibility to apprehend 15-year-old prostitutes. They would be considered to be suffering from abuse, albeit self-inflicted. Assuming these young people do not want to be apprehended, will not return to their families, and will run back to the streets if placed in a group home or other residential setting, it would be reasonable for the state to force them to receive services by placing them in contained facilities for a period of time.

Another variation of the focus on protection addresses the issue of young people who, because of physical/emotional disability, cannot be assumed to be able to make an easy transition to adulthood and who may need protection services along the way. For instance, a mentally handicapped 17-year-old living at home under abusive circumstances is in a different situation than another 17-year-old who can simply walk out the door and live independently. In those circumstances, the state should intervene to protect and assist the youth to gain as much independence as possible.

Both family and state advocates may well support the delivery of services to youth to aid them in their transition. But, if these services fail, they both agree that the youth may require coercive adult intervention. They may continue to disagree, however, about whether that adult intervention should come from the parent or the state.



Focus on Transition

The focus-on-transition approach is based on the belief that adolescents, especially older adolescents, should almost always be given the right to make their own decisions - and to live with the consequences. The proponents of this approach would agree that the consequences might include imprisonment if a law has been transgressed, as in the case of an adult offender.

Focus on transition assumes that adolescents are usually able to protect themselves in the sense that they can walk away from an abusive situation or get whatever help they need to deal with abusive treatment. They may require assistance from their families or from the state, but they do not normally require someone to make protection decisions on their behalf. What they may require, however, is support in the form of peer counselling, life skills or training opportunities, to increase the likelihood of a successful transition to adulthood. Applying this focus to the problem of juvenile prostitution, for instance, one would say that neither the state nor the family should intervene coercively to get a 15-year-old prostitute off the street. Rather, services should be delivered to these adolescents that would increase their options for choosing a less dangerous lifestyle: alcohol and drug counselling, day care for their children, subsidized housing, employment-training courses, back-to-school programs and so on. Often, the proponents of transition services do not focus on protection for the simple reason that they have seen this approach fail so many times.

This is not to say that young people should never receive protection services, but that these would be provided only in rare cases.

Parent-Teen Conflict

Psychologists maintain that adolescent struggles with parents are the norm and not the exception. Resistance to parental authority is how most adolescents establish their independent, adult identity. "Parent-teen conflict" is just another manifestation of the normal transition from dependence to independence. It is a problem that most parents and teenagers go through and move beyond.

One of the modern manifestations of this age-old emancipation process is the situation where the conflict between the teen and the parent becomes so pressing that third parties become involved. A youth may leave home and arrive at a ministry office requesting financial assistance to live independently.

Is parent-teen conflict primarily a protection issue? Is it an issue that requires support services to assist the family through this stage? The response to the problem will differ significantly depending on one's view.

One school of thought takes the position that each case of parent-teen conflict has to be considered individually on its own merits. A full assessment has to be done on each case to establish whether or not there is a protection issue involved. The other school of thought begins with an assumption that in most cases, such conflict does not involve a protection issue but rather a matter of family dynamics and shifting power relationships.

If there is no other agency responsible for transitional support services to youth and their families, there is an inclination on the part of the protection agency staff who, after all, would like to be part of a resolution of the conflict, to frame the problem in protection terms. In so doing, the worker can call upon various resources and services, such as temporary residential placements for the youth.

This may not, however, be a completely satisfactory response. For one thing, to take the position that every parent-teen conflict may have a protection focus means that the workers have to complete protection assessments. These can be time-consuming, involve other people, and should not normally be put into place unless there is a reason to believe that there is a potential protection issue. Further, using scarce residential resources for potentially unnecessary placements might well be questioned in terms of both cost and intrusion into normal family functioning.

Considering the changing structure of the family as a social institution, it would seem reasonable to suppose that there are new stresses on the relationship that may benefit from family-focused support services.

Special Needs of Youth in Care

For children living at home, reaching the age of majority does not normally entail a sudden break in support from the family. Most parents will continue to help and support their adult children, to the extent they can, for as long as is needed.

For children in care, however, the consequences of reaching the age of majority are immediate and final. The 18- or 19-year-old is cut off from the social support networks that the child welfare system has provided until then, such as foster homes, social workers, special allowances, and so on.

> As soon as that nice number rolls up, eighteen, nobody wants to know you. They just want to [be] rid [of] you all of a sudden... When you come up against problems, you haven't got anyone to turn to. You're rather frightened to go back... you don't feel you're wanted. You're not under their care anymore, they don't have to look after you, you are completely left on your own. (Raychaba, page 60)

If the state believes it must intervene in the lives of families to protect children otherwise left at risk, what responsibility does it have to ensure that such children receive the necessary supports to make a successful transition to independence?

Experience in British Columbia and elsewhere suggests two levels of support are needed. Recognizing that the transition to independence for most youths is a gradual process and requires specific services to prepare youth in care for independence, the state should provide skills training, life skills, and services to facilitate growth in the areas of personal and social development. These are supports that most parents provide to their children at home as part of the growing-up process.

The second needed level of support may be the extension of in-care services to youth who have reached the age of majority. Extensions could be conditional upon educational or training plans of individual youths or they could be allowed when the physical or mental incapacity of a youth makes the transition to adulthood a longer and more difficult process. There appears to be no debate in the literature or among professionals about the need for these types of services.

CHAPTER 5
THE ROLE OF THE STATE

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The Role of the State in Child Protection Matters

The shifting balance among the rights and responsibilities of the child, the family and the state are at the heart of the ongoing debate about the most effective child protection legislation, policies and service-delivery system.

The human face of the state is that of the politician, who makes child protection laws; the judge, who rules on cases brought forward as a result of such legislation; the lawyers, who represent the state in any child protection cases; and the social workers and police, who are often the first officials involved with the family and the child.

Those who are strong advocates for an explicit set of children's rights usually also believe in the state's responsibility to enforce those rights. This is a result of their concern about the ability of the modern family to advocate effectively for their children.

> A fundamental reason why children's rights have emerged as a serious topic at all is the erosion in confidence that the family can meet reliably all the needs of the child. (Wald, page 383)

On the other hand, strong family advocates often consider it unnecessary to enshrine children's rights in legislation. They believe that parents are the natural advocates for children and should be given the autonomy to perform that function with relative freedom.

Residual Role of the State

For those who give primacy to the family, the state should only get involved in child protection as a last resort, when parental failure has been demonstrated. This is the least active approach and the one that relies most heavily on the family as the basic protection agent for children.

> There are many who believe that the care of children, while important, is not the proper business of the state. Parents have the primary responsibility for meeting the basic needs of their children, although health and education are shared concerns. In this view, the best way to ensure the proper care for children is to guarantee the rights of parents to carry out their job and to emphasize their responsibility to do so. The child welfare system should intervene only when the life of the child is threatened or the level of care or behaviour of the child is well below community standards. Even in these cases, it is preferable to wait for neighbours and community groups to respond prior to government action. (Callahan, page 3)

Family Support Role

A less distant approach, but one that is also firmly attached to the basic belief in the primary role of the family, is the notion of the state as an agent of family support. Under this mandate, the state acknowledges the diverse stresses and strains in the modern family unit but retains its basic belief that this institution is the preferred environment for children. Therefore, it acts to support families to meet their child rearing functions through the provision of personal services such as family counselling. The state would also support families through subsidization of those whose incomes represent a potential barrier to their child-rearing activities. Subsidized housing and child care would be illustrations of this type of support. The state would only intervene coercively after providing necessary supports to families having difficulty raising their children. Even then, this would occur only if there is specific and serious potential harm to the child.

Recent initiatives in other jurisdictions in the area of state support to families have been characterized as the family preservation movement. Certain elements are common in these types of initiatives, according to Whittaker.

- Families are accepted for service only if there is an imminent risk of child apprehension.
- Services are crisis-oriented. Families are seen as soon as possible after referral is made.
- Staff are accessible, maintaining flexible hours seven days a week. Staff give out their home phone numbers to families.
- Intake and risk assessment processes ensure that no child is left in danger.
- Although problems of individuals may be addressed, the focus is on the family as a unit, rather than on parents or children as problematic individuals.
- Workers see families in their homes, making frequent visits that are convenient to each family's schedule. Many services are also provided in school and neighbourhood settings.
- The service approach combines teaching skills to family members, helping the family obtain necessary resources and services, and counselling based on an understanding of how each family functions as a unit.
- Services respond to family needs rather than strict eligibility categories.
- Each worker carries a small caseload at any given time. Some programs make use of teams.
- Programs limit their involvement with the family to a short period, typically between one and five months.

Senior Partner Role

Consider the following scenario. The 13-month-old child of a young couple (both 20) arrives at a hospital with serious bruising on her back. The parents say the child has fallen out of bed. The doctor cannot say one way or another how the bruising has occurred. The child protection social worker is called in. The parents repeat that the child fell out of bed. There is no previous abuse history. The police say they have no reason to lay charges. However, in speaking to various people in the community, the social worker hears that the father has an explosive temper and has been known to get into fist fights at the local pub. The worker also hears that the couple are in financial difficulty and are receiving unemployment insurance. On the basis of extensive experience, the worker thinks it possible that the father may have hurt his child in a fit of temper. The worker also knows, however, that this suspicion would not hold up in court. This is confirmed by the ministry lawyer who reviews the fact pattern of the case.

What to do?

The individualists would say: "Get out of this family's life. Children get bruised all the time accidentally. It is not exceptional, it is the norm. There is no reason to conclude this child has been deliberately hurt by its parents. Just because the parents are young and poor is no reason to subject them to harassment. If they were a middle class professional couple, there would be no issue. Calling the social worker in was an invasion of privacy and completely uncalled for."

Those who believe in the support role of government would agree with most of the above, but they would support calling the social worker in. They would also recognize that the parents may indeed be having difficulties with their parenting responsibilities because of the stresses and strains of their particular situation. They would have the social worker leave pamphlets with the parents outlining the various support services available to them on a completely voluntary basis should they choose to use them. The worker would leave a card and invite them to call any time if they need help or assistance.

The "senior partner" advocates would take a different tack. They would consider the parents' very young age, the known temper of the father, the infant status of the child, and the tight financial situation of the family. They would suggest that the worker sit down with the family with the following message: "Given my experience as a child protection social worker and the situation I see in your family, I am concerned about your ability to care for your child. While there is no evidence that you have hurt your child maliciously or because you are a bad person, I believe that you might have done so because you are having a difficult and frustrating time at the moment. I would like to try and help you. I want to come and visit you and the baby every week for the next few weeks to make sure everything is OK. Furthermore I want you to agree to take a course on anger management. If we can't come to an agreement about some steps to put in place

to reduce the risk to your baby, or if you don't follow up, with the steps we have agreed to, I may have to apprehend your child in order to ensure the child's safety. This would really be a last resort procedure for me; I would prefer that together we can agree on some ways to prevent this type of injury from ever happening again."

As illustrated, the senior partner role assumes that parents and the state are working together as partners in the child rearing function. Together, they look after children. The state accepts that families have the primary responsibility for day-to-day care, but it also sees itself as a key partner, providing health and education services for all children, and special services for those who need particular assistance. The state is the senior partner in that it has resources and access to the experience and knowledge of many child care experts. Therefore, it has a guiding role to play with parents and families when it makes decisions about difficult situations that may involve risks for children.

In the example used above, the fact is that any one of the three possible roles of the state could be correct. And each could be wrong, and entail some risk to the child, either immediately or in the long term.

In the first case, the "do-nothing" option, it may be that the child was indeed abused by the father, and the next time the injury will be more serious and possibly even fatal. In the second instance, illustrating the family support role of government, the parents again may have abused their child and may simply decide not to seek help or take advantage of any of the voluntary services available. This might mean another such incident is indeed likely, and possibly more serious. In the third scenario the parents may not have hurt their child in that particular instance, but out of fear and suspicion of the Ministry they might decide to go through with the counselling. They might even agree to see the worker for a few weeks. They may come out of the experience shaken, determined never again to seek help, even from a doctor, for problems with their child as that will only get them into trouble. If there is a time when they do need support in their child rearing responsibilities, they might be unwilling to seek it out due to this experience.

Previous discussions have addressed a number of issues with particular emphasis on the respective roles of the family and the state in a child welfare system. We have explored the potential limits that could be ascribed to this relationship: on the one hand, a relationship that emphasizes family autonomy in caring for their children, and on the other, a relationship that sees the state having more authority to intervene in family life in order to ensure the safety and well-being of children.

Role of the Courts

Child welfare statutes describe the role of the court and give the court authority to act in certain areas. The range of dispositions available to the court will be based to a large extent on the philosophical underpinnings of the legislation. If the intent of the legislation is to ensure that children are only removed from their home when there is concrete evidence that intervention is necessary to prevent serious harm to a child, the statute may give the court authority to determine whether an apprehension should occur.

If, on the other hand, the statute is intended to give the child welfare authority broader powers in determining when an intervention is required the statute may limit the court's authority to making a narrow range of orders in specific situations.

In addition to assigning certain responsibilities to the courts, the child welfare statute or the administering authority may engage other internal or external advocates to carry out specific functions. These functions may be established formally, through a child welfare statute or other legislation, or informally, through protocols or professional relationships. This may involve standards, licensing, monitoring case practice, and family or child advocacy.

This section deals with the potential role of the court and other internal or external advocates in child welfare matters. The section merely describes another set of issues that must be considered if we are to achieve a balanced approach to dealing with child welfare in British Columbia.

Initiation of Proceedings and Interim Custody Provisions

In another chapter, the grounds upon which the state could intervene to protect children were reviewed. These grounds, or definitions of a child in need of protection, describe the type of situations that must be reported to a child welfare agency, who must then determine whether an investigation is required.

Most statutes contain provision for an immediate or emergency apprehension at this stage if the child is in imminent danger. There are, however, differences in the way that various statutes deal with situations where the social worker finds that the child may be at risk but not in immediate danger. The degree of authority given to the social worker at this stage reflects the orientation of the statute. If the social worker is allowed to remove the child, while the family has no right to a formal review of this decision, the statute can be regarded as

interventionist. At the other extreme, the social worker would have to present his or her findings to the court or some external body and give the family an opportunity to present their side of the story. This approach would reflect a greater focus on family autonomy, and be considered non-interventionist.

Depending on the provisions of the statute, court proceedings would be initiated at either a pre-apprehension hearing or after the apprehension had taken place. At this stage the statute may allow the court:

- to order the child returned to parents either with or without supervision;
- to order emergency medical treatment or to agree to temporary medical treatment; or
- to agree to temporary placement outside the family home.

To what degree are parental rights and responsibilities suspended pending a formal hearing? What time limits are imposed between apprehension and the hearing? Does the court have the authority to order support services to allow a child to remain at home pending a hearing? Is the agency to provide the court with specific information on the type of service that it will provide to the child and the family?

Richard Barnhorst, in his article Child Protection Legislation: Recent Canadian Reform, identifies four criteria for assessing the type of approach used in different statutes:

- the degree to which the statute provides the court with "meaningful guidelines on whether the parent or the agency should have interim custody of the child";
- the requirements regarding "holding a hearing on the interim custody issue and on giving notice to the parents";
- whether the statute "explicitly allows the court to order the agency to provide support services to the family so that the child may be in the interim custody of the parents"; and
- the degree and flexibility of access privileges to the parent or extended family if the child is placed outside the home.

The degree to which the statute gives deference to family autonomy from the time of the initial investigation to the point where the court makes a disposition will determine whether it is primarily interventionist or non-interventionist.

Dispositions

Child welfare legislation gives the court authority to make a range of orders after it makes a determination that the child is or is not in need of protection. The range of possible outcomes or dispositions available to the court at this stage will indicate the overall orientation of the legislation.

Barnhorst describes some of the key considerations at this stage:

> In general, Canadian statutes provide some guidelines or factors for the judge to apply at the dispositional stage of the proceedings. From a non-interventionist perspective, a fundamental question is: to what extent do these guidelines or factors encourage placement of the child with the parent? Are there requirements that, before the court may order removal of the child, the agency must establish that in-home services would not provide sufficient protection? If necessary to remove the child, does the act reflect a preference for temporary, rather than permanent, custody orders and for maintaining parent-child contact if possible. (Barnhorst, page 271)

The general description of the potential dispositions offered by the various statutes is much the same. The child will either be returned to parents with or without the supervision of the agency, or made a temporary or permanent ward. Within these general categories there are many options for including more specific provisions that will reflect the philosophical underpinnings of the legislation.

Ongoing Accountability

After a decision has been made to suspend a parent's rights, either temporarily or permanently, there should be some mechanism in place to ensure that both the court and the agency are accountable for their actions. Procedures should be built in for systematic reviews to ensure that the intended goals of the intervention have been achieved, or if the original goals should be revisited and a new plan developed.

If at the time of intervention there were intended goals, it should be a relatively straight-forward task to measure relative success at any given time. The difficulty is that in many cases, the original goals of the intervention were neither clearly stated nor understood by all parties involved, including the parent(s), the child, the social worker and the court.

Some jurisdictions require an agency to submit to the court an individualized plan that specifies the type of service to be provided, the conditions that it is intended to correct, plans for parent-child contact, and an estimate of the time in which the goals of intervention will be achieved. Those who desire minimum state intervention into family life regard this positively and see it as an effort to hold the courts and the child welfare agency accountable for any intervention.

Roles of Internal and External Advocates

In this chapter we have considered the role the court could play to support the overall principles that govern child welfare statutes. This section considers the involvement of other internal and external advocates who could carry out functions in support of the overall intent of legislation.

The role of internal or external advocates may be defined by statute or by formal or informal policies. For example, the *Family and Child Service Act* designates the Superintendent of Family and Child Service as the official responsible to the Minister for the administration of the Act. The Act gives the Superintendent a range of general and specific responsibilities. These include the authority to receive and investigate reports that a child may be in need of protection. In addition, the Superintendent and delegates have other responsibilities that are specified by policy, including a range of guardianship responsibilities for children in care.

Some jurisdictions also provide court-appointed advocates to act on behalf of the child in the court process. These advocates are intended to balance the conflicting positions of the parents and the state. In the Native community there is a precedent for using elders' committees to do essentially the same thing. They help to find a non-adversarial solution that will meet the needs of the child while recognizing and respecting the role of family members.

Outside the court process there may be formal or informal involvement of individuals, organizations or institutions in some aspect of the child protection process. This might include licensing, monitoring, evaluation or professional accreditation. While the details of this potential involvement will not be dealt with in this paper, it is important to consider the potential role of internal and external advocates when developing a conceptual framework for new child welfare legislation.

CHAPTER 6
NATIVE CHILD WELFARE ISSUES

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Native Child Welfare Issues

Any discussion on the direction of future child welfare policy and legislation must involve a special focus on the needs of Native children and their families. The negative impact of child welfare laws on Native communities is well documented. Native children continue to be over-represented in the child welfare system as a whole. While the number of Native children in care has declined in recent years, the percentage continues to be disproportionate relative to the general population. Native children are more likely to come into care by apprehension than by voluntary agreement with their parents. In addition, the majority of Native children in care are cared for by non-Native resources.

While much can and should be said about the current situation, this discussion paper is intended to be forward looking and to consider possible solutions rather than to assign blame. This is not easy to do. There is a deep well of bitterness in many Native communities towards the child welfare system as we know it. This bitterness stems from the fact that so many children were taken from their families and communities and are perceived to be lost. The loss has not been confined to their families and communities. The loss of cultural identity experienced by a majority of these children is manifested in a wide array of adolescent and adult dysfunctioning. While some have found their way back to their families through their own efforts or with the assistance of a ministry social worker, and some have successfully re-established links to their culture, many others have not been so fortunate.

Discussion about the future direction of Native child welfare legislation and policy in this province will, by necessity, involve some expression of anger and frustration regarding past practices. It is hoped that this discussion paper will serve as a useful tool to focus debate and enable us to discover what could and should be.

During the past decade there has been a recognition in British Columbia of the need to develop more culturally appropriate services for Native children and their families. This has led to a greater involvement of Native people in the delivery of services to Native children, both within the context of services delivered by the province and through direct delivery of services by Native organizations. The challenge is to learn from these experiences and similar experiences in other jurisdictions, and to build on them.

Discussions regarding these changes are occurring in a much broader and more complex arena. Any new initiatives in this area must be seen in the context of broader issues – especially the move towards self-government and land claims negotiations. Activity in these other areas does not preclude moving ahead with reform to Native child welfare policy. In fact, any improvements in our approach to Native child welfare may help to bring positive, long-term change for both non-Native and Native communities.

Considering the role of the family, extended family and community is critical to any discussion of Native child welfare policy and program development. While there are considerable differences between Native and non-Native communities, there are also many similarities. As outlined earlier in this paper, most people would agree that:

- children should not be abused or unprotected;
- parents and family are primarily responsible for the care and protection of their children;
- children's right to protection can best be guaranteed by their families' assuming child-rearing responsibilities;
- as a society we will not stand silently by and allow a child to be seriously harmed; and
- if families cannot protect their children, government has a responsibility to intervene, either by supporting the family or by providing an alternative, safe environment for the child.

While these would seem to be generally held values which bridge cultural, linguistic and jurisdictional differences, they cannot be simply superimposed on Native communities. Many of these communities regard themselves as nations with the inherent right to determine what happens to children and families in their communities. Some of these communities are made up of distinct clans with long histories of internal and external decision-making structures. Other communities operate under other forms of tribal government, each with unique approaches and traditional ways of dealing with child and family matters.

A number of Native groups do not recognize the authority of the province to make and enforce laws over their people. Others will accept the authority of the province as an interim step towards their longer term aspirations to some form of self-government.

This jurisdictional question will not be resolved in this chapter. Rather, various models will be presented for discussion. Each model represents a different way of approaching the question of jurisdiction.

Historical and National Context

In the past, assistance to Native children and their families was provided by band custom and within the extended family. Children were raised, educated and protected by the adults in their community. Aunts, uncles, grandparents and natural parents provided service as part of a large pattern of mutual assistance based on reciprocal obligations within extended families and other traditional kinship relations. These traditional systems were damaged as a result of the cultural and economic clash between traditional Native systems and the non-Native system. Dependencies engendered by paternalistic government policy and legislation of the day and by the movement of several generations of children into residential schools led to a breakdown of the traditional support system.

The extension of provincial services to reserve lands in the 1950's involved, from the Native point of view, the imposition of a formal, authoritative and intrusive child welfare program. The approach was so disruptive that Native leaders, over the past two decades, have increased demands for a return to more local control and greater band involvement in planning for children from their communities. A number of provinces have changed their legislation and policy to recognize the need for greater Native involvement in all aspects of service delivery, including control in planning for individuals and providing care for Native children in their own communities. In some cases, the province has transferred overall responsibility for services to bands or Native child welfare agencies.

By 1987, 20 per cent of the bands across Canada had been successful in establishing agreements with the provincial and federal governments to run their own programs. The province provided the authority to act under its child welfare legislation and the federal government provided the funding.

In 1987, the federal government imposed a moratorium on funding new programs and only recently have they announced plans to allow new program development. While both the province and Native leaders have expressed concerns about some aspects of the proposed plan, it is clear that in the next few years a number of new Native child and family service programs will be established in British Columbia.

Any new agreements should recognize and maintain the special relationship Native people have with the federal government and clarify respective federal and provincial responsibilities with respect to Native child and family services. New agreements should also recognize the federal government's responsibility for funding Native child and family services agreements which cover services to all registered Natives.

The federal government has recently announced plans to provide funds to five British Columbia Native groups for the pre-planning and planning stages for the establishment of new Native child and family service programs. The Nisga'a, Cowichan, Squamish Sto-lo and Nicola Valley groups have entered into agreements with the federal government to work towards the development of their own child welfare programs.

Current Situation

British Columbia has 196 bands with a total population of 80,715. The child population (0-19) on-and-off reserve is 34,184. On reserve child population represents 59.4 per cent of the total Native child population. In addition, there are large numbers of non-status Natives who are not registered under the *Indian Act* but maintain significant links to the Native community as a whole. These 196 bands represent a wide range of cultural and linguistic groups, each with unique approaches to dealing with children and child welfare in their communities. Given this diversity, it is not possible to develop one approach that will work throughout the province.

In recent years a number of Native child welfare programs have been established in British Columbia. Each program represents a unique approach and all are useful models when considering new development. The Spallumcheen by-law, the Nuu-chah-nulth Family Services, the Carrier-Sekani and MacLeod Lake agreements, and the Native Child Welfare Unit in Vancouver are examples. While these initiatives have been successful, each has given rise to questions regarding future policy and program development.

The Spallumcheen child welfare program was established on the basis of a by-law passed by the band in 1980. Some have questioned the validity of the by-law because the *Indian Act* does not have provisions allowing band control over child welfare. In spite of this, the program stands, and ministry staff have respected the by-law when planning for Spallumcheen children who come to our attention. Should the *Indian Act* be amended to allow other bands to pass similar by-laws? Should such a by-law apply anywhere, or should it be limited in force to the community that passed it?

In 1985, the Ministry entered into an agreement with the Nuu-chah-nulth Tribal Council to provide delegation of authority to operate their own child welfare program. The Nuu-chah-nulth program was the first time in this province that authority to act under the *FCSA* was delegated to social workers in a Native child welfare program. One of the difficulties that arises with this model is that the workers derive their authority to act from the Superintendent of Family and Child Service, but they are employees of the Nuu-chah-nulth Tribal Council. Are there other legislative models that would avoid this type of dual reporting relationship?

The Carrier-Sekani and MacLeod Lake agreements provided provincial funding to allow these bands to hire community workers to prepare to take over responsibility for their own child welfare. The federal government has made no funding commitment to date.

It is clear from these brief profiles that there is more involved than simply making a commitment to work co-operatively. In the process of reviewing the existing legislative framework, any changes must reflect both the objectives of the Ministry and the desire of Native people to be directly involved in the planning and delivery of child welfare services for their children and families.

Future Directions

In considering legislative or policy change in this area, it is critical to understand the profound differences between Native and non-Native cultures and their views on child welfare.

There are many concepts that originate in Anglo-European culture that cannot simply be forced on the Native community. Samuel Bull discusses this in his article, "The Special Case of the Native Child":

> Fundamental to the conflict between cultural and traditional values of Indians and Caucasians, is an opposing philosophy or world view. Traditional Indian religions teach and practise a pantheistic view of life. This view holds to the basic truth that man is a part of a delicate balance in a universe in which all life forms and natural elements inter-relate and interact, and thus are to be respected. No part is more or less important than another. And man must live his life in such a manner that the balance is not upset. In contrast, Christianity subscribes to the belief that nature is to be mastered for the benefit of man, as man is considered superior to all forms of life. These opposing philosophies have been responsible for basic differences between traditional Caucasian and Indian child rearing practices.

Similar cleavages appear in other jurisdictions. Since 1983 the Yukon Health and Human Resources department has been involved in a project to delegate social programs to Yukon First Nations — particularly to the Champagne/Aishihik peoples. Government officials describe many positive outcomes. They have also identified some of the sources of conflict that they encountered. This is instructive for us as we position ourselves to transfer greater control over child welfare matters to First Nations Peoples in British Columbia.

Conflicting values and traditions occur in a number of different areas. Some of these conflicts concern organizational issues. Non-Native society has traditionally operated with a top-down structure. Authority is ceded to the person or group in power. This person or group then directs the activities of those below. In traditional Native culture, authority is exercised by a group, operating from a consensual decision-making model. Imposition of a hierarchical, non-Native structure on traditional Native arrangements creates tension as this conflicts with the balances and compromises necessary to consensual decision-making.

The oral tradition of aboriginal communities is not duplicated in non-Native society, where reliance on print has become a prerequisite to communication. Oral history relies on a different set of skills for both the listener and the speaker; it is not dependent on the presentation or preparation of written material. The

Anglo-European system of dispute resolution based on an adversarial court-room process has no parallel in Native culture. There are several consequences of the consensual decision-making model present in Native communities. One is the sharing of knowledge. In order to reach informed decisions, members of the community must be aware of all relevant facts. The small, homogenous nature of many Native communities leads to greater public knowledge of matters that might be considered private or confidential in larger, non-Native communities.

European society has historically viewed children as the property of their parents — usually the father. Many Native communities not only adopted a matrilineal tradition but also lacked the view of the child as the property of either parent. The mother and her family were responsible for the raising, nurturing and education of children. The obligations of members of the extended family are thus strongly felt in Native communities.

In considering implications that result from these apparent cultural conflicts one must ask whether it is indeed possible to develop non-Native-value-based legislation that can ever anticipate and deal with such basic differences. For example in the non-Native system the rights of a mother relinquishing a child for adoption are observed and protected in both law and policy. Many Native leaders would argue that the tribe or the clan should be recognized and given equal or even greater status in an adoption proceeding involving a Native child. They believe their rights should equal the rights of the relinquishing mother. Can the rights of a relinquishing mother, the long-term needs of the child and the aspirations of a community be balanced in a contemporary setting? These are difficult questions and there are no simple answers.

A variety of models has been proposed that would develop culturally appropriate child welfare systems and avoid or minimize the conflicts that have been identified. Federal or provincial Native child welfare acts, by-laws, or self-government proposals may all be viable options in the long-term. Meanwhile, the only practical solution may be to ensure our legislation and policy recognizes and respects the roles of all of the parties in the Native community and enables them to be involved in a planning process. In this process, the primary concern of all parties is to ensure the safety and well-being of the child.

The following are models that in varying degrees allow Native people to become involved in the planning and delivery of services to Native children and their families.

- Self-government legislation. This model, which is reflected in the *Sechelt Self Government Act*, has provisions for the band to pass by-laws concerning social service and child welfare matters. A number of groups in British Columbia, including the Nisga'a and the Westbank Bands, are pursuing self-government legislation of their own.

- Band by-law. This model was used by the Spallumcheen Band. The by-law is the only one of its kind in Canada, and the federal government has clearly indicated that they will not approve any other similar by-law proposals.

- Transfer of provincial authority. The Manitoba and Ontario legislation allow for the transfer of provincial authority to a program or corporate entity, which is then responsible for the administration of the child welfare laws. These Native child welfare agencies operate both off and on reserve lands.

- Government-operated Native child welfare units. A number of provinces have established special Native child welfare units that operate within the regular Ministry structure but are staffed, to the extent possible, by Native people. In March 1990, the Ministry of Social Services and Housing established a Native child welfare unit in Vancouver.

- Protocol agreements describing the working relationship between the Ministry's child welfare program and the band, tribal council or Native organization. These protocols are intended to ensure effective communication between the different parts of the child welfare system when planning for a Native child.

- Partial transfer or delegation. The Carrier-Sekani and MacLeod Lake agreements are examples of programs where the Ministry has cooperated in allowing the Native organization to provide non-statutory services.

These are only some of the models that should be considered. During the consultation process, it is hoped that other approaches will be identified that will serve as useful models for culturally appropriate Native child welfare services.

Given the fact that there are so many demographic groups in British Columbia, which range in size, culture, heritage and language, it is clear that no one model will be appropriate for all situations. The key will be to develop legislation and policy that will allow the development of community-based Native child welfare programs that are appropriate to the unique needs of Native people.

This differential approach necessitates extensive consultation and dialogue with all Native people through their bands, tribal councils and organizations. Only through this process of talking to one another and helping one another understand each other's needs will we succeed in achieving a new and better vision for Native child welfare programs in British Columbia.

CHAPTER 7
DEFINITIONS

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Review of Definitions

The phrase "a child in need of protection" or "a child who is abused or neglected" is frequently used by professional practitioners, members of the media and the general public. Awareness of the serious and often devastating impact of this apparently widespread problem has led to extensive public information campaigns to encourage the reporting of child abuse.

The Badgley Report, abuse by persons in positions of trust, abuse in residential schools and orphanages, and ritual abuse have reinforced views about the depth and scope of the problem. This, coupled with information from psychologists and psychiatrists regarding the cycle of child abuse (especially concerning the potential for the abused to become abusers), has brought this problem into the open and made what is known as the child abuse syndrome one of the most important social policy issues of the last two decades.

Each child welfare statute defines conditions that indicate that a child may be in need of protection. These definitions, or grounds for intervention, are critical factors in determining how the legislation is administrated and are a cornerstone of any child welfare statute. The definitions in effect define the population that will be served by the legislation. They will identify the grounds for intervention and describe the age of the child population served, the meaning of parent or family, and what is anticipated in the way of services or resources.

At the heart of any debate on the preferred definitions are the basic value questions raised earlier in this discussion paper. What is the proper role of the state in relation to the family? What is the minimal standard of care that a parent or parents should be expected to provide?

It seems reasonable to assume that the basic principles and values underlying any child protection statute should be reflected in the definitions contained in the legislation. While this may be a straight-forward assumption, other jurisdictions have identified this area as being one of the most challenging and contentious in the process of developing and implementing new legislation.

The divergent points of view of those who desire a strong role for the state and those who want little state intervention are clearly illustrated when one tries to reach consensus on the definitions of abuse and neglect. The grounds that establish the point at which state intervention in support of a child overrides family authority and autonomy are critical elements of any child protection legislation.

Grounds for Intervention

The section that defines child abuse or neglect and the grounds on which the state can intervene and provide non-voluntary child protection service is the most fundamental part of all child welfare legislation. These definitions establish reporting responsibilities; they also establish the parameters for reports that will be received for investigation and affect the ultimate disposition of the case.

Many critics maintain that the existing definitions in the *British Columbia Family and Child Service Act* are too vague and imprecise. They argue that this contributes to over-reporting and unwarranted, damaging intrusions into the lives of many families.

On the other hand, there are those who argue the devastating impact of undetected child abuse and neglect justifies a broader definition. They argue that it is better to err on the side of caution and ensure that the child is protected than to leave a child in a potentially unsafe environment. They argue that the existing laws are adequate provided that there are specific administrative rules (for example, standards of practice and detailed risk assessment procedures) as well as better training for practitioners.

In his book Recognizing Child Abuse, Douglas Besharov discusses this issue:

> Professionals and private citizens need to do a much better job of identifying and reporting suspected cases of child abuse, while also guarding against inappropriate reporting. Recognizing appropriately reportable situations is difficult, but the current high rates of simultaneously under and over reporting are unfair to the children and parents involved and threaten to undo much of the progress that has been made in building child protective programs. A proper balance must be struck. (Besharov, page 19)

Fundamental to this discussion are questions related to the scope of the legislation. Is it intended to apply to all children who are alleged to be abused regardless of circumstance, or is it restricted to intra-familial or quasi-familial situations? Does it deal with past abuse or the potential for future abuse or is it limited to events that are happening here and now? Is exposure to family violence a form of abuse? Are our definitions applied evenly to all children regardless of age? Should an 18-year-old be considered a child? These are only a few of the questions raised.

These questions must be considered in the broad context of conflicting value systems when considering the role of the state, the family and the child. Clearly, the statutory grounds given for non-voluntary intervention are critical to the entire system.

Role of the Family

Most people would concede that the intended foci of service under our child protection legislation are intra-familial or quasi-familial situations. Under this framework, allegations of abuse by a third party should be dealt with as a criminal matter and would be referred to the police for assessment and any required action.

In order to ensure that the rights of parents are protected and that unwarranted intrusion does not occur, some jurisdictions have developed definitions that clearly link risk to the child with a failure on the part of the parent to ameliorate the condition causing the risk.

An example of a definition which links parental responsibility to the allegation of abuse or neglect is contained in the guidelines for protective service systems published by the National Association for Child Welfare Administration. They define child abuse or neglect as "any act or failure to act on the part of a parent, which results in death or serious physical, sexual, or emotional harm, or presents an imminent risk of serious harm to a person under age 18."

While there is little apparent disagreement over core definitions of physical harm, sexual abuse or failure to provide necessary medical treatment, there are still many contentious areas. For example, should a parent be allowed to use physical discipline with a child? Is failure to send a child to school grounds for intervention? Many would argue that the state has no right to intervene in these matters where lifestyle or cultural differences may simply be in conflict with the dominant, middle class standards.

Range and Focus of the Definitions

In comparing the legislation from various jurisdictions, it becomes clear that there is a broad range of grounds for intervention that have been established.

The last part of this appendix contains a comparison of the definitions of a child in need of protection in other provinces' child welfare legislation.

In his book The Vulnerable Social Worker, Douglas Besharov describes a wide range of conditions that should be considered reportable:

Physical battering:	physical assaults (such as hitting, kicking, biting, throwing, burning, or poisoning) that caused, or could have caused, serious physical injury.

Physical endangerment:	reckless behaviour toward a child (such as leaving a young child alone or placing a child in a hazardous environment) that caused, or could have caused, serious physical injury.
Physical neglect:	failure to provide food, clothing, hygiene, and other needed care that caused, or over time would cause, serious physical illness or disability.
Medical neglect:	failure to provide the medical, dental, or psychiatric care needed to prevent or treat serious physical or emotional injury, illness, or disability.
Sexual abuse:	vaginal, anal, or oral intercourse, vaginal or anal penetrations, or other forms of inappropriate sexual contact that caused, or over time would cause, serious emotional injury.
Sexual exploitation:	use of a child in prostitution, pornography, or other sexually exploitative activities that caused, or over time would cause, serious emotional injury.
Emotional abuse:	physical or emotional assaults (such as torture and confinement) that caused, or could have caused, serious emotional injury.
Developmental neglect:	failure to provide needed emotional nurturing and physical and cognitive stimulation that caused, or over time would cause, serious developmental deficits. (This is sometimes misleadingly called "emotional neglect").
Improper ethical supervision:	parental behaviour that contributes to the delinquency of the child.
Education neglect:	failure to send a child to school in accordance with the state's education law.
Abandonment:	leaving a child alone or in the care of another under circumstances that demonstrate an intentional abdication of parental responsibility.
Institutional maltreatment:	the abuse or neglect of children by public or private residential foster care agencies. (Besharov, 1985, page 23)

Having outlined the range of potential definitions and discussed their relationship to parental responsibility, we must also consider the issue of the time-frames in which these events occur and are reported. Child protection workers are frequently expected to deal with cases involving an allegation of abuse that occurred in the past or where there is a concern of anticipated risk to a child because of an event that may occur in the future. Anticipated or historical abuse is often associated with sexual abuse cases. A victim discloses that he or she was abused in the past and that the alleged or known offender is now in contact with other children. Should the legislation address these types of situations, or are these matters that fall more appropriately within the mandate of the police?

As discussed earlier, there is a considerable challenge in developing definitions that link the notion of imminent or potential risk to the child, the concept of primary parental responsibility, and the role of the state in any required interventions. The definitions, regardless of the jurisdiction involved, will undoubtedly reflect either a minimalist or an interventionist perspective. Through carefully developed administrative policies and procedures and effective use of the court, these divergent perspectives can be balanced to create a responsible and responsive child welfare system.

Standards

The degree to which we consider a child to be at risk is influenced by the standard by which we measure the abuse or neglect. The norm in one community is not necessarily the norm in another. Child protection workers frequently receive calls from concerned and well-intentioned people who believe that a child is at risk because he or she has not taken a lunch to school.

Is this type of call the responsibility of a child protection agency or should the school personnel, public health nurse or other support workers deal direct with the family? These are important questions, and they are critical to the way we shape our child protection service.

What do we mean by "the minimum standards of care"? Where are these standards described? How is a parent to know what is expected? What is the state's responsibility in assisting a family to meet these standards?

If we accept the notion that standards may vary from community to community, we again face difficult questions. How do we define norms for a community? Should we accept significantly lower norms when we believe it puts the child at risk?

The way we define abuse or neglect will have a direct impact on the relationships and relative roles of the family and the state in a child welfare system. Similarly, the concept of "community standard" will influence the degree of tolerance that we might have towards different child rearing practices. Given the multicultural nature of our society, it may be unrealistic to expect that we could or should expect a narrow range of acceptable parental behaviour.

British Columbia
Family and Child Service Act

"in need of protection" means, in relation to a child, that he is

(a) abused or neglected so that his safety or well being is endangered,

(b) abandoned,

(c) deprived of necessary care through the death, absence, or disability of his parent,

(d) deprived of necessary medical attention, or

(e) absent from his home in circumstances that endanger his safety or well being.

Alberta
Child Welfare Act

(2) For the purposes of this Act, a child is in need of protective services if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:

(a) the child has been abandoned or lost;

(b) the guardian of the child is dead and the child has no other guardian;

(c) the guardian of the child is unable or unwilling to provide the child with necessities of life, including failing to obtain for the child or to permit the child to receive essential medical, surgical or other remedial treatment that has been recommended by a physician;

d) the child has been or there is substantial risk that the child will be physically injured or sexually abused by the guardian of the child;

(e) the guardian of the child is unable or unwilling to protect the child from physical injury or sexual abuse;

(f) the child has been emotionally injured by the guardian of the child;

(g) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment;

(h) the guardian of the child has subjected the child to or is unable or unwilling to protect the child from cruel and unusual treatment or punishment;

(i) the condition or behaviour of the child prevents the guardian of the child from providing the child with adequate care appropriate to meet the child's needs.

(3) For the purposes of this Act,

(a) a child is emotionally injured

(i) if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development, and

(ii) if there are reasonable and probable grounds to believe that the emotional injury is the result of

(A) rejection,

(B) deprivation of affection or cognitive stimulation,

(C) exposure to domestic violence or severe domestic disharmony,

(D) inappropriate criticism, threats, humiliation, accusations or expectations of or towards the child, or

(E) the mental or emotional condition of the guardian of the child or chronic alcohol or drug abuse by anyone living in the same residence as the child;

(b) a child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by a laceration, a contusion, an abrasion, a scar, a fracture or other bony injury, a dislocation, a sprain, hemorrhaging, the rupture of viscus, a burn, a scald, frostbite, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;

(c) a child is sexually abused if the child is inappropriately exposed or subjected to sexual contact, activity or behaviour.

Saskatchewan
Child and Family Services Act

11 A child is in need of protection where:

(a) as a result of action or omission by the child's parent:

(i) the child has suffered or is likely to suffer physical harm;

(ii) the child has suffered or is likely to suffer a serious impairment of mental or emotional functioning;

(iii) the child has been or is likely to be exposed to harmful interaction for a sexual purpose, including conduct that may amount to an offence within the meaning of the Criminal Code;

(iv) medical, surgical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner has not been or is not likely to be provided to the child;

(v) the child's development is likely to be seriously impaired by failure to remedy a mental, emotional or developmental condition; or

(vi) the child has been exposed to domestic violence or severe domestic disharmony that is likely to result in physical or emotional harm to the child;

(b) there is no adult person who is able and willing to provide for the child's needs, and physical or emotional harm to the child has occurred or is likely to occur; or

(c) the child is less than 12 years of age and:

(i) there are reasonable and probable grounds to believe that:

(A) the child has committed an act that, if the child were 12 years of age or more, would constitute an offence under the Criminal Code, the *Narcotic Control Act* (Canada) or Part III or Part IV of the *Food and Drug Act* (Canada); and

(B) family services are necessary to prevent a recurrence.

(ii) the child's parent is unable or unwilling to provide for the child's needs.

Manitoba
Child and Family Services Act

17(1) For purposes of this Act, a child is in need of protection where the life, health or emotional well-being of the child is endangered by the act or omission of a person.

17(2) Without restricting the generality of subsection (1), a child is in need of protection where the child

(a) is without adequate care, supervision or control;

(b) is in the care, custody, control or charge of a person

(i) who is unable or unwilling to provide adequate care, supervision or control of the child, or

(ii) whose conduct endangers or might endanger the life, health or emotional well-being of the child, or

(iii) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner;

(c) is abused or is in danger of being abused;

(d) is beyond the control of a person who has the care, custody, control or charge of the child;

(e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment or associations of the child or of a person having care, custody, control or charge of the child;

(f) is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child;

(g) being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child; or

(h) is the subject, or is about to become the subject, of an unlawful adoption under section 63 or of an unlawful sale under section 84.

Ontario
Child and Family Services Act

Amended wording

there are reasonable and probable grounds to believe that,

(a) the child is in need of protection; and

(b) a less restrictive course of action is not available or will not protect the child adequately.

Quebec
Youth Protection Act

38. For the purposes of this Act, the security or development of a child is considered to be in danger where

(a) his parents are dead, no longer take care of him or seek to be rid of him;

(b) his mental or affective development is threatened by the lack of appropriate care or by the isolation in which he is maintained or by serious and continuous emotional rejection by his parents;

(c) his physical health is threatened by the lack of appropriate care;

(d) he is deprived of the material conditions of life appropriate to his needs and to the resources of his parents or of the persons having custody of him;

(e) he is in the custody of a person whose behaviour or way of life creates a risk of moral or physical danger to the child;

(f) he is forced or induced to beg, to do work disproportionate to his capacity or to perform for the public in a manner that is unacceptable for his age;

(g) he is the victim of sexual abuse or he is subject to physical ill-treatment through violence or neglect;

(h) he has serious behavioural disturbances and his parents fail to take the measures necessary to remedy the situation or the remedial measures taken by them fail.

Subparagraph (g) of the first paragraph does not apply if the child is the victim of sexual abuse or is subject to physical ill-treatment from any person other than his parents and the latter take the measures necessary to remedy the situation.

1977, c. 20, s. 38; 1981, c. 2, s. 8; 1984, c. 4, s. 18.

38.1 The security or development of a child is considered to be in danger where

(a) he leaves his own home, a foster family, a reception centre or a hospital centre without authorization while his situation is not under the responsibility of the director of youth protection;

(b) he is of school age and does not attend school, or is frequently absent without reason;

(c) his parents do not carry out their obligations to provide him with care, maintenance and education or do not exercise stable supervision over him, while he has been entrusted to the care of an establishment or foster family for two years.

New Brunswick
Family Services Act

31 (1) The security or development of a child may be in danger when

(a) the child is without adequate care, supervision or control;

(b) the child is living in unfit or improper circumstances;

(c) the child is in the care of a person who is unable or unwilling to provide adequate care, supervision or control of the child;

(d) the child is in the care of a person whose conduct endangers the life, health or emotional well-being of the child;

(e) the child is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of such treatment;

(f) the child is living in a situation where there is severe domestic violence;

(g) the child is in the care of a person who neglects or refuses to provide or obtain proper medical, surgical or other remedial care or treatment necessary for the health or well-being of the child or refuses to permit such care or treatment to be supplied to the child;

(h) the child is beyond the control of the person caring for him;

(i) the child by his behaviour, condition, environment or association, is likely to injure himself or others;

(j) the child is in the care of a person who does not have a right to custody of the child, without the consent of a person having such right;

(k) the child is in the care of a person who neglects or refuses to ensure that the child attends school; or

(l) the child has committed an offence.

Nova Scotia
Children and Family Services Act

Child in need of protective services

(2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or

(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

(l) the child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another person's property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, or refuses or is unavailable or unable to consent to, the necessary services or treatment;

(m) the child is under twelve years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of a parent or guardian of the child or because of the parent or guardian's failure or inability to supervise the child adequately.

Prince Edward Island
Family and Child Services Act

(2) For the purposes of this Act, a "child in need of protection" means a child

(a) who is not receiving proper care, education, supervision, guidance or control;

(b) whose parent is unable or unwilling to care for the child, or whose behaviour or way of life creates a danger for the child;

(c) who has been physically abused, neglected or sexually exploited or is in danger of consistently threatening behaviour;

(d) who is forced or induced to do work disproportionate to his strength or to perform for the public in a manner that is unacceptable for his age;

(e) whose behaviour, condition, environment or associations is injurious or threatens to be injurious to himself or others;

(f) for whom the parent or person in whose custody he is neglects or refuses to provide or obtain proper medical or surgical care or treatment necessary for his health and well-being where it is recommended by a duly qualified medical practitioner;

(g) whose emotional or mental health and development is endangered or is likely to be endangered by the lack of affection, guidance and discipline or continuity of care in the child's life;

(h) for whom the parent or person in whose custody he is neglects, refuses or is unable to provide services and assistance needed by the child because of the child's physical, mental or emotional handicap or disability;

(i) who is living in a situation where there is severe domestic violence;

(j) who is beyond the control of the person caring for him;

(k) who is living apart from his parents without their consent; or

(l) who is pregnant and refuses or is unable to provide properly and adequately for the health and welfare needs of herself and her child both before and after the birth of her child.

Newfoundland
An Act to Amend the Child Welfare Act 1972

(p) "neglected child" means

(i) a child who is without proper supervision or control,

(ii) a child who is living in circumstances that are unfit or improper for the child,

(iii) a child in the care or custody of a person who is unfit, unable or unwilling to exercise proper care over the child,

(iv) a child whose life, health, or emotional welfare is endangered,

(v) a child who is in the care and custody of a person

(A) who fails to provide for his education, or

(B) who does not try to prevent habitual absences of the child from school when there is no valid reason for the absence,

...

(ix) who is found begging in any place of public resort,

(x) who habitually frequents any tavern, poolhall or gambling room,

(xi) who, being under the age of fourteen years, habitually sells anything in the streets of public places after nine o'clock at night,

(xii) who habitually absents himself from his home or school,

(xiii) who habitually uses obscene, profane or immoral language or is guilty of any indecent conduct in any public place,

(xiv) who is unlawfully assaulted, ill-used or treated with cruelty or neglect by his parents or guardian,

(xv) who is found having in his possession any obscene picture, drawing or printed matter,

(xvi) who, being under the age of sixteen years, is employed anywhere between the hours of nine o'clock at night and eight o'clock of the following day,

(xvii) who,

(A) being under the age of 12 years or

(B) being between the ages of 12 and 14 years and without the written consent of his parents or guardian, is found selling newspapers or other articles in a public place.

CHAPTER 8
COMPARATIVE REVIEW

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Rights of Children

Newfoundland

- The court may ask the wishes of a neglected child (s. 14).
- The act does not affect any right the child now possesses (s. 14).

Nova Scotia

- Any child 12 or older shall receive notice of a hearing and the court may order that the child be made a party and have counsel, if this is in the child's interest. Any child 16 or older is a party unless the court orders otherwise, and if so the child is entitled to counsel on request (s. 36.1 (c) and (d) and s. 37 (1) and (2)). The Ministry pays counsel and fees (s. 37 (3)).
- Where parents consent to an order, the court will satisfy itself that the child, if 12 or older, understands the nature and consequences of consent, and consents to the order. The court will ask if the child has consulted independent counsel in this matter (s. 41 (4)).

Prince Edward Island

- The child's views and preferences are to be considered in deciding the child's best interests (s. 1 (d)).
- A child 16 or older may apply to terminate the permanent guardianship of the Director (s. 37 (3)).

New Brunswick

- The preamble states that children's basic rights and fundamental freedoms are "no less than those of adults" (preamble).
- Children have the right to special safeguards and assistance in self-preservation; to apply for variation or termination of supervision, custody, or guardianship orders; to be heard and participate in processes; to be informed generally and specifically of the results of a protection investigation; to a lawyer, if necessary; and to face the least necessary invasion of privacy and freedom (s. 7, s. 30 (8) and s. 60 (3) and (4)).

Quebec

- Children have the right to prevention of removal from, or interference with, their family life.
- If removed from their homes, they have the right to continuous, stable care that is as similar to normal family life as possible. They also have the right not to be detained (s. 2.2 - 11.3).
- Children have the right to be informed of their legal rights, and to consult lawyers separate from those of their parents. Children also have the right to appeal court decisions in which their interests are represented (s. 80).
- Children have the right to know a children's agency's plans for them; to be heard; to be prepared for and consulted on any transfer of care; to health, social and educational services; to confidential communications with a lawyer, the Director, a committee, the court, parents, and siblings unless the court rules otherwise; and to copies of orders (s. 94).

Ontario

- The court may order that a child have a lawyer (s. 38).
- Children may not be confined or subjected to corporal punishment (s. 96 and 97).
- Children have the right to regular, private visits and communication with their families, unless they are wards of the Crown (s. 99).
- Children have the right to regular, private visits with their lawyer, advocate, MLA or similar representative (s. 60 (4)).
- Children have the right to apply for a court to review their status; to appeal court orders; to reasonable privacy, possessions and religious instruction; to participate in the planning of their care; to good care; to be consulted; to be informed of their rights; and to lay complaints (s. 65 (1)(a), s. 100, s. 101, s. 105).

Manitoba

- Children have the right to a continuous family environment with the least interference (declaration of principles).
- A child 12 or older has the right to be advised and to make his views known. If under the age of 12, the child has these rights if a judge thinks they are appropriate to the child (s. 2).
- A child 12 or older has the right to be given notice of, and to be present at, the child's protection hearing, unless a judge orders otherwise (s. 33 (2)).
- A judge may order a lawyer for a child 12 years of age or older, and the child may instruct this lawyer (s. 34 (2)).
- Children have the right to be informed of their rights.

Saskatchewan

- Children have the right to the least disruption of their lives (s. 3).
- Children have the right to have their wishes considered in decisions regarding their best interest (s. 4).

Alberta

- Children have the right to have their opinion considered (s. 2).
- Children 12 and older have the right to notices of hearing; to apply to vary or end certain orders; and to consent to others (s. 21, 32 (2) and 33).

British Columbia

- (Not applicable at present).

Yukon

- A child has the right to be in a family.
- A child has the right to apply to vary or end a custody order (s. 143 (2) and 144).
- A child's official guardian may determine that the child needs a lawyer at the public's expense (s. 167 (2)).
- A child has the right to be informed of any protection investigation involving the child and to be given reasons if the child is deemed able to understand (s. 119 (2)).

Apprehension: Warrant Requirements

Newfoundland

- A warrant is not required unless an apprehension requires entering premises (with force if necessary) or a parent refuses a summons to appear (s. 11 (1) and (2)).

Nova Scotia

- A warrant is not required if reasonable and probable grounds for child protection exist and a child's health or safety cannot be protected otherwise (s. 26 (2) and 33 (1)).
- Entry with or without force requires a warrant, unless a child's health or safety is in immediate jeopardy (s. 34 (1) and (3)).

Prince Edward Island

- A warrant is not required unless one must enter premises to search for a child (s. 15 (1)).
- The court may issue an order for a person to deliver his or her child (s. 17).

New Brunswick

- A warrant for apprehension is not required, even if a search, with force, for an abused child is pursued (s. 32 (1) and 33 (1)).
- A warrant may be issued to enter premises and search for a child whose security or development is endangered (s. 33 (2)).

Quebec

- No warrant is required if a situation is urgent (s. 46 and s. 35 (3)).
- Otherwise, a justice of the peace may authorize all necessary aspects of an apprehension, including an entry and search of premises (s. 35 (2) and (3)).

Ontario

- No warrant is required if there is a perceived, substantial risk (s. 40 (6)).
- A justice of the peace may issue a warrant if he is sure less restrictive measures would be insufficient. He can order a child brought to court (s. 40).

Manitoba

- No warrant is required for an apprehension (s. 21 (1)).
- If a child is in immediate danger or has been left alone, apprehension does not require a warrant even if forced entry and a search of premises are required (s. 21 (2)).
- Other cases where the entry and search of premises are involved do require a warrant (s. 21 (3)).

Saskatchewan

- A warrant is not required if a child is at risk of serious harm, but these cases require review by a panel (s. 17 (1)).
- In other cases, a justice of the peace issues a warrant for a search for a child and evidence, unless a delay would endanger the child or result in the loss of evidence (s. 13 (3), (4) and (5)).

Alberta

- A warrant is not required if a child has been abandoned, or left at home, or if there is a substantial risk of physical or sexual abuse. If a child removed from the Director's care has had his or her life or health endangered, a warrant is not required (s. 17).
- These cases include the right to enter and search, with force, without a warrant (s. 17 (10)).
- Otherwise, the court or a justice of the peace must provide the warrant, by telecommunication if it is not practical to appear (s. 17 (2)).

British Columbia

- A warrant is not required, unless it is necessary to enter and search premises (s. 9 (1) and (2)).
- A warrant is not required for entry and search if a child is in immediate physical danger (s. 9 (3)).

Yukon

- A warrant is not required to enter premises with force and apprehend a child if the child is in immediate danger (s. 119 (1)).
- Otherwise, an investigation occurs with warrants to search and produce documents (s. 117).
- A parent may be required to appear before a judge with his or her child (s. 118 (1)).

Notice and Reasons for Apprehension

Newfoundland

- A parent must be notified within five days of an apprehension, and given a hearing date, to be within 15 days of same. A statement of reasons must be included (s. 11.1 (1)).
- a judge may reduce or dispense with the notice if a child's health or safety would be endangered (s. 12.1).
- Written notice of further hearings is required (s. 15 (5)).

Nova Scotia

- An agent shall forthwith serve a notice on the parent when a child is taken into care (s. 33 (2))
- Two days' notice of hearing must be given to parties, which may be waived by the parties or by the court (s. 39 (1)).
- Subject to claims of privilege, an agency must make a full, adequate, and timely disclosure to a parent concerning allegations, orders sought, and intended evidence (s. 38 (1)).
- On application, a court may order disclosure or discovery according to the Family Court Rules and the Civil Procedure Rules (s. 38 (2)).

Prince Edward Island

- Notice of apprehension is to be given forthwith, with at least five days notice of a hearing date (s. 27 (1), 36 (1) and 37 (4)).
- The Act's Notice of Hearing Regulations requires that a copy of the report to court be attached to the parent's notice.

New Brunswick

- The parent is to immediately receive a notice of apprehension, with reasons for the apprehension (s. 51 (1)).
- Apply within five days for hearing, which must be held within 15 days, and notify parent of same (s. 51 (1), (2) and (3)).

Quebec

- Apprehension cases are to be submitted to the court or court clerk within 24 hours, or over a weekend if necessary, for a one- to five-day order (s. 47).
- A declaration to the court, including a summary of facts, is to accompany the notice of hearing to be served by registered or certified mail, 10 to 30 days beforehand (s. 76).

Ontario

- Decisions must be made subject to procedural safeguards (s. 2 (2)(b)).
- Parents are parties to protection hearings and are entitled to notice (s. 39 (1)).
- The court may dispense with a notice if delay would endanger a child (s. 39 (7)).
- A child 12 or older must receive notice unless it would harm him. A child 11 or under is not entitled to notice unless he is capable and would not be harmed by it (s. 39).

Manitoba

- Notice of an abuse report is to be sent to parents and the alleged abuser (s. 19.1 (3)).
- A notice of apprehension is to be sent to a parent (s. 24).
- The agency must apply for a hearing within four days, giving 10 days notice to the parent and the child if he or she is 12 or older (s. 30 (1)).

- A parent may ask what the grounds for an apprehension are and, if dissatisfied, may apply for more (s. 33 (2) and (3)).
- A judge may dispense with any notice (s. 30 (4)).

Saskatchewan

- If a child is apprehended, the parent is to receive reasons for the apprehension and advice regarding the advisability of counsel (s. 19 (1)).
- Parents are to get three days notice of protection hearings and a summary of reasons for the apprehension (s. 24 (1) and (3)).
- The court may order that notice be given to a child (s. 29 (1)).
- The court may dispense with any notice (s. 77).

Alberta

- Parents are to receive a notice of apprehension and a hearing within ten days, and a statement of reasons for the apprehension and of the rights of guardians two days before such a hearing (s. 18, 19 (5) and 19 (7)).
- A parent can serve notice on the Director for a hearing in one day, after two days have passed (s. 19).
- Any notices of further hearings are to be received five days before the date of these hearings (s. 21 (2)).
- The court may reduce or dispense with notice (s. 21 (3)).

British Columbia

- A notice is to be given to a parent at least seven days before the hearing (s. 12 (2)).
- A court may alter or dispense with notice (s. 12 (2)(e)).

Yukon

- If apprehended a child is to be informed of the reasons (s. 119 (2)).
- A person whose home is entered can apply for an order that this entry be justified (s. 119 (10)).
- A parent is to be given notice of hearings and of the grounds for protection (s. 121 (1)(a)).

Variation and Appeal

Newfoundland

- Appeals of decisions of the Minister, a Director, or a judge occur in the Trial Division or Court of Appeal (s. 56).
- A parent or guardian may apply for variation or termination of custody and maintenance orders (s. 15 (9)).

Nova Scotia

- Parties may apply for a review of a temporary care order (s. 46 (1)).
- Parties, including a child 16 or older, may apply to terminate a permanent care order (s. 48 (3)).
- Orders may be appealed to the Appeal Division of the Supreme Court. A stay of the order may be requested as well (s. 49).

Prince Edward Island

- The Director may bring supervision orders to a judge for review, or apply for the review of a temporary custody order, for variation or termination of a permanent order (s. 35, 36 (1) and 37 (2)).
- Appeals of an order under this Act are heard by the Supreme Court (s. 41).

New Brunswick

- A parent or child may apply to the court to have a supervisory or custody order varied or terminated (s. 60 (4)).
- Where a child is in care under a guardianship order, the parent or child may apply to the Attorney General for a review. He may allow the parent to apply to the court to terminate the order (s. 61 (1)).

Quebec

- The Director shall periodically review the case of each child in his charge (s. 57).
- The Superior Court handles any appeal of any decision or order made under the Act (s. 100).
- In matters of law, the Court of Appeal handles appeals (s. 115).

Ontario

- The court may vary or terminate a status of a child who is the subject of an order for society supervision or wardship, or certain Crown wardships, if a society, child, parent or band applies for a review (s. 60).
- A director shall once a year review status of every Crown ward (s. 64 (1)).
- Societies shall establish written review procedures for complaints that are to be heard by the Board of Directors and further reviewed by the Director (s. 64 (3)).
- District court handles appeals of court orders regarding care and custody (s. 65).
- The court may, at any time, vary a temporary custody order (s. 47 (6)).

Manitoba

- Either party may apply to vary an access order (s. 27 (5)).
- A judge may vary, alter or discharge any order following an application from an affected person (s. 38 (4)).
- Any judge may, at any time a protection order is in force, hold further hearings to determine if a child would need protection if he was returned to his parents (s. 40 (1)).
- An order of master may be appealed to the Court of Queen's Bench judge within 21 days (s. 43 (1)).
- Judge's order may be appealed to the Court of Appeal within 21 days. This limit may be waived (s. 44 (1)).

Saskatchewan

- Where an officer has apprehended a child, a family review panel shall review the apprehension within seven days (s. 17 (4) and 20 (1)).
- The court may, on the application from any party, vary or terminate a custody order (s. 39 (1)).
- The Court of Queen's Bench handles appeals of any order under the Act; further appeals are made to the Court of Appeal, family court (s. 63 (2) and (6)).

Alberta

- A child, guardian or other party may appeal decisions of the Director to an appeal panel established and appointed by the Minister (s. 84, 85, and 86).
- If the appeal period has passed, a guardian or a child 12 or older who is subject to supervision or a temporary guardianship order may apply to the court to order varying, reviewing, or ending of the original order, or the making of a new one (s. 30 (1)).
- A court order or the refusal to make a court order under this Act may be appealed by a guardian or a child 12 or older, within 30 days, to the Court of Queen's Bench (s. 80 (1)).

- A guardian, or a child 12 or older, can apply for an order staying the execution of any order at the time it is made (s. 81).

British Columbia

- A parent may apply to the court for cancellation or variation of a custody order (s. 13 (6)).
- Parties to an order of the court may appeal that order (s. 20).
- The Supreme Court may rescind a permanent order (s. 21).

Yukon

- A parent can apply to a judge to end or vary temporary or permanent custody orders (s. 143 (1) and 144 (1)).
- The Supreme Court handles the appeal of any order made or refused by a judge (s. 145).

Title, Date, Scope and Authority

Newfoundland

Child Welfare Act, 1972. Amended 1981 and 1988.

Scope:	Single purpose.
Authority:	Director of child welfare and includes assistant director.

Nova Scotia

Children and Family Services Act, 1990.

Scope:	Unified purpose.
Authority:	Minister of Community Services.

Prince Edward Island

Family and Child Services Act, 1982. Amended 1983 and 1988.

Scope:	Single purpose.
Authority:	Director of child welfare.

New Brunswick

Family Services Act, 1980. Amended 1983, 1985, 1986 and 1987.

Scope:	Unified purpose
Authority:	Minister of Social Services.

Quebec

Youth Protection Act, 1977. Amended 1986.

Scope:	Unified purpose.
Authority:	Comité de la Protection de la Jeunesse (14 government appointees). Directors of youth protection in social service centres.

Ontario

Child and Family Services Act, 1984.

Scope:	Unified purpose.
Authority:	Directors (may be more than one).

Manitoba

Child and Family Services Act, 1985. Amended 1989.

Scope:	Unified purpose.
Authority:	Director of child and family services.

Saskatchewan

Child and Family Services Act, 1989.

Scope:	Single purpose.
Authority:	Director.

Alberta

Child Welfare Act, 1984. Amended 1989.

Scope:	Unified purpose.
Authority:	Directors (may be more than one). Children's advocate.

British Columbia

Family and Child Service Act, 1980.

Scope:	Single purpose.
Authority :	Superintendent of family and child service.

Yukon

Children's Act, 1984. Amended 1986.

Scope:	Unified purpose.
Authority:	Director of family and children's services.

Principles and Statements of Intent

Newfoundland

- The best interests of the child are paramount (s. 2 (1)).

Nova Scotia

- The preamble focusses on the family as the basic unit of society. Children's rights are no less significant than those of adults. The principle of minimizing invasion of privacy is respected. Services must respect a child's sense of time (preamble).

- The purpose of the Act is to protect children from harm, to promote the integrity of the family, and to ensure the best interests of children. The latter concern is paramount (s. 2).

Prince Edward Island

- The best interests of the child shall be the paramount consideration (s. 2).

New Brunswick

- The preamble focuses on the family and on the rights of the child, which are considered to be no less significant than those of adults.

- The integrity of family is protected under the Act. The best interests of the child are paramount in Part IV, which deals with applications for orders (s. 53 (2)).

Quebec

- The "General Principles and Children's Rights" focus on family responsibility and abuse prevention, and state that decisions must be made in the interest of the child (s. 3).

Ontario

- Promotion of the best interests, protection, and well-being of children is paramount (s. 1).
- Family integrity, the continuity of care and respect for cultural differences are other concerns (s. 1).

Manitoba

- The declaration of principles focuses on families, and states that cultural and linguistic heritage must be respected.
- The best interests of the child are paramount in all proceedings except those which determine a need for protection (s. 2 (1)).

Saskatchewan

- The purpose of the Act is to promote well-being, through services designed to support and preserve families in the least disruptive manner (s. 3).

Alberta

- Actions must be in the best interest of the child. Other matters to be considered include family integrity, child's rights, abuse prevention, cultural heritage, and others (s. 2).

British Columbia

- The safety and well-being of a child shall be the paramount consideration (s. 2).

Yukon

- The interests of the child are paramount and prevail wherever conflict exists (s. 1).

Family Rights and Prevention

Newfoundland

- The child's best interests include love, affection, family ties and a lack of disruption where these factors are concerned (s. 2.1 (2)).

Nova Scotia

- The family is the basic unit of society. Intervention is governed by the rule of law. Families are entitled to the least invasion of privacy and interference necessary (preamble).
- Parents are responsible for their children, who should not be removed unless all other measures are inappropriate. This principle is repeated in detail through specific instructions to judges and through requirements in sections relating to temporary and permanent care orders (s. 39 and s. 42).
- To enable a child to remain at home, the Ministry and any involved agency are to take reasonable measures to provide services that promote family integrity (s. 13).

Prince Edward Island

- The best interests of children include the need for continuing parental care, guidance and ties, and the importance of family relationships (s. 1).
- The transcript of hearing evidence is to be given to parents of apprehended children (s. 34 (3)).

New Brunswick

- The basic unit of society is the caregiver (preamble).
- The family has the right to the fewest necessary invasions of privacy or freedom (preamble).
- Apprehension is only to occur when all other actions would be inappropriate (preamble).
- The integrity of the family is protected under the Act (s. 2).

- Parents are ensured reasonable access to a child in custody (s. 55 (4)(b)).
- The Minister is to inform parents of protection investigation findings and conclusions (s. 30 (8)).

Quebec

- Primary responsibility for children rests with their parents (s. 2.2).
- Any intervention must aim to prevent the need for further interventions (s. 2.3).
- Every decision must consider the ramifications of having a child remain with his family, to assess if this is in the best interest of the child (s. 4).
- Parents have the right to be informed of their rights and plans, to be heard, to have a lawyer, and to copies of decisions or orders (s. 5, 6, 78, 94).

Ontario

- The Act's purposes include supporting family integrity and autonomy (s. 1).
- It respects the need for continuity and stability in family relationships (s. 1 (d) and 37 (3)).
- Authorities must take the least restrictive course available (s. 1 (c)).
- Parents are to be informed of their rights, and parents are to be heard and represented (s. 2 (2)(a)).

Manitoba

- The family is the basic unit of society, and is to be supported (declaration).
- The family is the basic source of care, with primary responsibility for child care (declaration).
- Parents have the right to face the least interference necessary, to be informed of their rights, to participate in decisions, and to have a lawyer (declaration and s. 34 (1)).

- Families are entitled to receive services that are designed to prevent child abuse or neglect (declaration).
- Parents have the right to reasonable access to their child (s. 39 (2)).
- Children have the right to a family (declaration).

Saskatchewan

- The Act is designed to support and preserve the family in the least disruptive manner (s. 3).
- Services and mediation are offered before routine apprehensions, which are to occur only when no other action is practicable (s. 14 and 15).
- A child's best interests include continuity in the family environment (s. 4).

Alberta

- The family is the basic unit of society, and is responsible for the care of its children (s. 2).
- Families have the right to face the least invasion of privacy necessary and to freedom (s. 2).
- Apprehension is to only occur where less intrusive measures are insufficient (s. 2).
- Protection services are implemented to prevent removal when practicable (s. 2).

British Columbia

- (Not applicable at present).

Yukon

- The child's best interests include stable bonds with parents, continuity, and the right to be in a family (s. 131).
- Services are designed to promote the family unit, and to reduce the need to take children into care (s. 105).

After Care

Newfoundland

- A child is a person under 16.
- When a child reaches the age of 16 while in care, the Director may continue to provide care and maintenance until the child is 19, and maintenance until the child is 21 (s. 46 (3)(a) and (b)).

Nova Scotia

- A child is a person under 16.
- The Minister may provide for a person between 16 and 19 years of age, offering the same services or placement as he would to a child (s. 14 (2)).
- A child who is 16 or 17, not in the care of a parent, and who has a special need, can enter into an agreement with an agency or the Minister to access services to meet needs. These must be less than one year in duration, but can be extended (s. 19 (1) and (2)).
- An order for permanent care terminates when a child reaches 19, unless the court orders that care be extended to age 21 because the child is pursuing an educational program or is disabled (s. 48 (1)).

Prince Edward Island

- A child is a person under 18.
- When a child is in permanent care, reaches 18 years of age, and is a full-time student or is incapacitated, the Director may continue to provide care and maintenance until the child is 21 (s. 37 (7)).

New Brunswick

- A child is a person actually or apparently under the age of majority.
- The Minister may prescribe groups of persons, according to their age or category of need, as eligible to receive any service or benefit under the Act (s. 3 (1)(d)).
- Following an application by the Minister, the court may extend a guardianship order until a child reaches the age of 21 when the child is a student, is incapacitated, or another appropriate reason exists (s. 56 (5)).

Quebec

- A child is a person under 18.
- Foster care is not to continue once a child reaches the age of 18, unless the child consents and the Director establishes valid reasons, in which case it can continue until the child is 21 (s. 64).
- Tutorship can be applied to children whose parents are not providing care for the period during which the child is subject to foster care under the Act (s. 71 (6)).

Ontario

- A child is a person under 18.
- A society or the Minister may enter an agreement to provide services for a child 16 or older who is not with a parent and who has a special need. This shall not continue beyond the child's 18th birthday (s. 31 and 32).
- The protection part of the Act does not apply to a child who is actually or apparently 16 or older (s. 37).
- However, if a child was under 16 when a proceeding or an apprehension commenced, the court may hear, determine, and make an order as if the child was still under 16 (s. 43).
- When an order for Crown wardship expires, the society may continue care and maintenance for former wards in accordance with its regulations (s. 67).

Manitoba

- A child is a person under 18.
- When a permanent guardianship order expires as a result of a child reaching 18, an agency may continue care and maintenance "for the purpose of completing the transition to not being a ward, for any period after the expiration... which does not extend beyond the 21st birthday" (s. 50).

Saskatchewan

- A child is an unmarried person actually or apparently under 16. However, a child is considered to be a person actually or apparently 16 or 17 in the part of the Act that deals with children in care (s. 51).
- If a person 16 or 17 is in need of protection and the Director considers circumstances exceptional, an officer may apprehend and remove the child to a place of safety. The Minister shall provide family services to the person prior to a protection hearing (s. 18).
- The Minister may continue to provide support, shelter, care, counselling and family services after a person in his care reaches 18 if they are continuing their education. This may not continue after the person turns 21 or after the person's education is complete (s. 56).

Alberta

- A child is a person under 18.
- When a child in care reaches 18, the Minister may continue to provide care and maintenance for the periods and purposes and on the conditions prescribed in the regulations (s. 33).

Yukon

- A child is a person under 18.
- A director has the rights and powers of a parent over a child committed to care until the child is 19 if the child is dependent because of education or incapacity, or 18 if the child is not (s. 137).
- Copies of orders are to be sent to the chief or council of a band (s. 73 (4)).
- A person adopting a Native child shall facilitate the child's exercise of rights as a Native, and inform them of these rights. The court shall inform the adopting parent of this requirement (s. 73 (5 & 6)).

Alternative Care

Saskatchewan

- A child is a person actually or apparently 16 or 17 or under for the part of the Act respecting children in care (s. 51).
- Where a 16- or 17-year-old is in need of care and supervision and neither parent is willing to assume responsibility, or the child cannot re-join his family, the Minister may, by agreement with the child, provide residential services, financial assistance or both. An agreement shall include the provision that the child may seek independent advice prior to making an agreement. An agreement is not to exceed one year in duration, but may be renewed (s. 10).
- If a child in care is 16 or older and the Minister considers it in the child's best interests, he may discontinue responsibility for the expense of providing services (s. 55).
- Permanent and temporary orders expire when a child turns 18 (s. 68).

Alberta

- A child 16 or older who is the subject of an order for care may be allowed to live independently (s. 15 and 29).

Yukon

- A judge, acting on the application of a child 14 or older, may extend temporary guardianship beyond the two year maximum, for a further period not exceeding two years (s. 129).

- A child over 14 in temporary care may apply to a judge for an order ending care or an order allowing him to live in care of some other person, while supported by the Director (s. 143).

Provisions for Natives

Nova Scotia

- Where a child in protective care is Native, the MicMac Family and Children's Services of Nova Scotia may at any stage be substituted as a party for the agency that commenced the proceeding (s. 36 (3)).

Ontario

- Native heritage is to be taken into account when considering a child's best interests (s. 27, 43 and 130).

- Bands and communities are to sit on boards of agencies and on Residential Placement Advisory committees (s. 13 and 34); participate in placement hearings (s. 36); have party status in protection hearings (s. 39); apply for access and restraining orders (s. 54 and 76); receive notices and copies of assessment reports (s. 50 and 60); and provide services under agreements with the Minister or as a designated children's aid society (s. 193 and 194).

- Customary care is recognized (s. 191) and may be subsidized (s. 195). Service providers must consult regularly with bands on specified matters (s. 196).

Manitoba

- The declaration of principles states that Native bands are entitled to be provided with services in a manner that respects their unique status as aboriginal peoples.

- The Minister may enter agreements with a Native band and the Government of Canada for incorporation by a band or council, of an agency to provide services under the Act (s. 6).

- Court orders respecting a child who is part of a band are to be sent to an agency serving that band (s. 38).

Saskatchewan

- The court may designate a chief or council as the person or body having sufficient interest in a child. Such persons or bodies are to be served notices, and are parties to protection hearings (s. 23).

- Written notice must be given to a chief or designate when a child is the subject of an order for permanent custody (s. 37).

- The Minister may enter agreements with any legal entity for the provision of services or administration of all or any part of the Act by that entity (s. 61).

Alberta

- The Director shall consult with a chief, band council or designate before entering a permanent guardianship agreement, applying for supervision, or issuing temporary or permanent guardianship order (s. 73 (1)).

- In the case of off-reserve status Natives, the Director shall ask a child's guardian to consent to the Director's consultation with the chief, and the Director shall do so if the guardian consents (s. 73 (3)).

- Copies of orders are to be sent to the chief or council of a band (s. 73 (4)).

- A person adopting a Native child shall facilitate the child's exercise of rights as a Native, and inform them of these rights. The court shall inform the adopting parent of this requirement (s. 73 (5 and 6)).

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